MT LEGISLATIVE HISTORY

Chapter 685 1989

Bill H _____ (S) 333 Original bill & hist. ✓C

H. Committee on Judiciary

Hearing Date(s) Mar 08 ✓C

_____ ___C

_____ ___C

_____ ___C

Date Out 3-8 ___C

S. Committee on Judiciary

Hearing Date(s) Feb 10 ✓C

_____ ___C

_____ ___C

_____ ___C

DATE OUT 2-10 ___C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

Note: A Free Conference Committee was appointed to address SB 333. Its minutes, though, are unavailable. To the best of our knowledge such minutes were never retained by anyone.

2/21	REFERRED TO LOCAL GOVERNMENT		
3/07	HEARING		
3/08	COMMITTEE REPORT--BILL CONCURRED		
3/11	2ND READING CONCURRED	88	0
3/13	3RD READING CONCURRED	99	0
	RETURNED TO SENATE		
3/17	SIGNED BY PRESIDENT		
3/17	SIGNED BY SPEAKER		
3/18	TRANSMITTED TO GOVERNOR		
3/23	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 256 EFFECTIVE DATE: 3/23/89		

SB 333 INTRODUCED BY MAZUREK, ET AL.
GENERALLY REVISE THE LAWS RELATING TO TRUSTS AND TRUSTEES

2/03	INTRODUCED		
2/03	REFERRED TO JUDICIARY		
2/10	HEARING		
2/11	COMMITTEE REPORT--BILL PASSED AS AMENDED		
2/14	2ND READING PASSED	47	0
2/16	3RD READING PASSED	48	0
	TRANSMITTED TO HOUSE		
2/21	REFERRED TO JUDICIARY		
3/08	HEARING		
3/08	COMMITTEE REPORT--BILL CONCURRED		
3/11	2ND READING CONCURRED AS AMENDED	85	1
3/14	3RD READING CONCURRED	98	0
	RETURNED TO SENATE WITH AMENDMENTS		
4/01	2ND READING AMENDMENTS NOT CONCURRED	48	0
4/04	FREE CONFERENCE COMMITTEE APPOINTED		
4/06	FREE CONFERENCE COMMITTEE REPORT NO. 1		
4/11	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	49	0
4/13	3RD READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	48	0
	HOUSE		
4/06	FREE CONFERENCE COMMITTEE APPOINTED		
4/07	FREE CONFERENCE COMMITTEE REPORT NO. 1		
4/11	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	96	1
4/11	3RD READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	98	0
4/18	SIGNED BY PRESIDENT		
4/19	SIGNED BY SPEAKER		
4/25	TRANSMITTED TO GOVERNOR		
5/18	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 685 EFFECTIVE DATE: 10/01/89		

SB 334 INTRODUCED BY TVEIT, ET AL.
PROVIDE FOR LEASEHOLDER'S RIGHT OF FIRST REFUSAL IN SALE OF RAILROAD RIGHT-OF-WAY

2/03	INTRODUCED		
2/03	REFERRED TO HIGHWAYS & TRANSPORTATION		

SENATE BILL NO. 333

INTRODUCED BY MAZUREK, CRIPPEN, BISHOP

IN THE SENATE

FEBRUARY 3, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
FEBRUARY 11, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 13, 1989	PRINTING REPORT.
FEBRUARY 14, 1989	SECOND READING, DO PASS.
FEBRUARY 15, 1989	ENGROSSING REPORT.
FEBRUARY 16, 1989	THIRD READING, PASSED. AYES, 48; NOES, 0.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 16, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
FEBRUARY 20, 1989	FIRST READING.
MARCH 8, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 11, 1989	SECOND READING, CONCURRED IN AS AMENDED.
MARCH 14, 1989	THIRD READING, CONCURRED IN. AYES, 98; NOES, 0.
	RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 1, 1989	SECOND READING, AMENDMENTS NOT

CONCURRED IN.

APRIL 4, 1989 — ON MOTION, FREE CONFERENCE COMMITTEE REQUESTED AND APPOINTED.

IN THE HOUSE

APRIL 6, 1989 — ON MOTION, FREE CONFERENCE COMMITTEE REQUESTED AND APPOINTED.

IN THE SENATE

APRIL 6, 1989 — FREE CONFERENCE COMMITTEE REPORTED.

APRIL 11, 1989 — SECOND READING, FREE CONFERENCE COMMITTEE REPORT ADOPTED.

IN THE HOUSE

APRIL 11, 1989 — THIRD READING, FREE CONFERENCE COMMITTEE REPORT ADOPTED.

IN THE SENATE

APRIL 13, 1989 — THIRD READING, FREE CONFERENCE COMMITTEE REPORT ADOPTED.

RECEIVED FROM HOUSE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

SENATE BILL NO. 333

INTRODUCED BY [signature]

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAWS RELATING TO TRUSTS AND TRUSTEES; AMENDING SECTIONS 2-2-103, 31-2-209, 70-20-101, AND 82-1-304, MCA; AND REPEALING SECTIONS 72-12-101 THROUGH 72-12-103, TITLE 72, CHAPTERS 20 THROUGH 25, AND SECTIONS 72-27-101 AND 72-27-102, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1.** Short title. [Sections 1 through 215] shall be known and may be cited as the "Trust Code".

NEW SECTION. **Section 2.** General rule concerning application of trust code. Except as otherwise provided by statute:

(1) After September 30, 1989, [sections 1 through 215] apply to all trusts regardless of when they were created, unless in the opinion of the court, application of a particular provision of [sections 1 through 215] would substantially interfere with the rights of the parties and other interested persons, in which case the particular provision of [sections 1 through 215] does not apply and prior law applies.

(2) After September 30, 1989, [sections 1 through 215] apply to all proceedings concerning trusts whenever commenced, unless in the opinion of the court, application of a particular provision of [sections 1 through 215] would substantially interfere with the effective conduct of the proceedings or the rights of the parties and other interested persons, in which case the particular provision of [sections 1 through 215] does not apply and prior law applies.

NEW SECTION. **Section 3.** Common law as law of state. Except to the extent that the common law rules governing trusts are modified by statute, the common law as to trusts is the law of this state.

NEW SECTION. **Section 4.** Constructive and resulting trusts not affected. Other than [sections 19 through 23], nothing in [sections 1 through 215] affects the law relating to constructive or resulting trusts.

NEW SECTION. **Section 5.** Application of code to charitable trusts. Unless otherwise provided by statute, [sections 1 through 215] apply to charitable trusts that are subject to the jurisdiction of the attorney general.

NEW SECTION. **Section 6.** Laws affecting construction and operation of wills apply to trusts. (1) Title 72, chapter 2, part 5 and 72-3-901 apply to the construction and operation of trusts, except as provided in subsection (2).

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(2) This section does not apply to any trust if its terms expressly or by necessary implication make this section inapplicable to it.

(3) For purposes of [sections 1 through 215], references in Title 72, chapter 2, part 5 and in 72-3-901 to a "testator" refer to the trustor, references to a "will" refer to a trust, references to a "devisee" refer to a trust beneficiary, and references to a "devise" refer to a trust distribution.

NEW SECTION. **Section 7.** Definitions. As used in [sections 1 through 215] unless the context requires otherwise the following definitions apply:

(1) "Beneficiary" means a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer and, as it relates to a charitable trust, includes any person entitled to enforce the trust.

(2) "Person" means an individual, a corporation, an organization, or other legal entity.

(3) "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.

(4) "Trust" when not qualified by the word "resulting" or "constructive", includes any express trust, private or charitable, with additions thereto, wherever and however

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created. It also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. The term does not include conservatorships, personal representatives, custodial arrangements pursuant to chapter 26 of this title, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind and any arrangement under which a person is nominee or escrowee for another.

(5) "Trustee" means the person holding property in trust. The term includes an original, additional, or successor trustee, whether or not appointed or confirmed by a court.

(6) "Trustor" means the person who creates a trust.

(7) "Trust company" means an entity which has qualified to engage in and conduct a trust business in this state.

(8) "Trust property" means the property held in trust.

NEW SECTION. **Section 8.** Reference to statutes -- amendments and additions. Whenever a reference is made to any portion of [sections 1 through 215] or to any other law, the reference applies to all amendments and additions made.

NEW SECTION. **Section 9.** Methods of creating trust. Subject to other provisions of [sections 1 through 72], a trust may be created by any of the following methods:

(1) a declaration by the owner of property that the owner holds the property as trustee;

(2) a transfer of property by the owner during the owner's lifetime to another person as trustee;

(3) a testamentary transfer of property by the owner to another person as trustee;

(4) an exercise of a power of appointment to another person as trustee; or

(5) an enforceable promise to create a trust.

NEW SECTION. **Section 10.** Intention to create trust. A trust is created only if the trustor properly manifests an intention to create a trust.

NEW SECTION. **Section 11.** Trust property. (1) A trust is created only if there is trust property.

(2) The requirement of subsection (1) may be satisfied if the trust (or its trustee) is designated to be beneficiary of the proceeds of an insurance contract, an annuity contract, an employee benefit plan, an individual retirement account, or similar device, even though the designation may be revoked.

NEW SECTION. **Section 12.** Trust purpose. A trust may be created for any purpose that is not illegal or against

public policy.

NEW SECTION. **Section 13.** Trust for indefinite or general purposes. A trust created for an indefinite or general purpose is not invalid for that reason if it can be determined with reasonable certainty that a particular use of the trust property comes within that purpose.

NEW SECTION. **Section 14.** Designation of beneficiary. (1) A trust, other than a charitable trust, is created only if there is a beneficiary.

(2) The requirement of subsection (1) is satisfied if the trust instrument provides for either of the following:

(a) a beneficiary or class of beneficiaries that is ascertainable with reasonable certainty or that is sufficiently described so it can be determined that some person meets the description or is within the class; or

(b) a grant of power to the trustee or some other person to select the beneficiaries based on a standard or in the discretion of the trustee or other person.

NEW SECTION. **Section 15.** Designation of trust or trustee as beneficiary. (1) A trust or trustee may be designated as the beneficiary of the proceeds of an insurance contract, an annuity contract, an employee benefit plan, an individual retirement account, or similar device if the designation is made in accordance with the contract, plan, account, or device.

(2) Subsection (1) applies even though the trust or trustee is named or to be named by will or trust and whether or not the will or trust is in existence at the time of the designation.

NEW SECTION. **Section 16.** Statute of frauds. A trust is not valid unless evidenced by one of the following methods:

(1) by a written instrument signed by the trustee, or by the trustee's agent if authorized in writing to do so;

(2) by a written instrument signed by the trustor, or by the trustor's agent if authorized in writing to do so; or

(3) by operation of law.

NEW SECTION. **Section 17.** Consideration. Consideration is not required to create a trust, but a promise to create a trust in the future is enforceable only if the requirements for an enforceable contract are satisfied.

NEW SECTION. **Section 18.** Exception to doctrine of merger. If a trust provides for one or more successor beneficiaries after the death of the trustor, the trust is not invalid, merged, or terminated in either of the following circumstances:

(1) where there is one trustor who is the sole trustee and the sole beneficiary during the trustor's lifetime; or

(2) where there are two or more trustors, one or more of whom are trustees, and the beneficial interest in the

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trust is in one or more of the trustors during the lifetime of the trustors.

NEW SECTION. **Section 19.** Resulting trust upon failure of trust. Where the owner of property gratuitously transfers it and manifests in the trust instrument an intention that the transferee should hold the property in trust but the trust fails, the transferee holds the trust estate as a resulting trust for the transferor or his estate, unless:

(1) the transferor manifested in the trust instrument an intention that no resulting trust should arise; or

(2) the intended trust fails for illegality and the policy against unjust enrichment of the transferee is outweighed by the policy against giving relief to a person who has entered into an illegal transaction.

NEW SECTION. **Section 20.** Resulting trust upon full performance of trust. Where the owner of property gratuitously transfers it subject to a trust which is properly declared and which is fully performed without exhausting the trust estate, the trustee holds the surplus as a resulting trust for the transferor or his estate, unless the transferor manifested in the trust instrument an intention that no resulting trust of the surplus should arise.

NEW SECTION. **Section 21.** Purchase money resulting trust. (1) Where a transfer of property is made to one

person and the purchase price is paid by another, a resulting trust arises in favor of the person who paid the purchase price.

(2) Subsection (1) does not apply in any of the following circumstances:

(a) whenever the party paying the purchase price manifests an intention that no resulting trust should arise;

(b) whenever the transferee is a spouse, child, or other natural object of the bounty of the person who paid the purchase price; or

(c) whenever the transfer is made in order to accomplish an illegal purpose and the policy against unjust enrichment of the transferee is outweighed by the policy against giving relief to a person who has entered into an illegal transaction.

(3) Subsection (2)(b) does not apply if the party paying the purchase price manifested an intention that the transferee should not have the beneficial interest in the property.

NEW SECTION. **Section 22.** Constructive trust. A constructive trust arises when a person holding title to property is subject to an equitable duty to convey it to another on the ground that the person holding title would be unjustly enriched if he were permitted to retain it.

NEW SECTION. **Section 23.** Resulting trusts,

constructive trusts -- statute of frauds. Resulting trusts and constructive trusts are considered to arise by operation of law and are valid under [section 16(3)].

NEW SECTION. **Section 24.** Restraint on transfer of income. Except as provided in [section 28], if the trust instrument provides that a beneficiary's interest is not subject to voluntary or involuntary transfer, the beneficiary's interest in income under the trust may not be transferred and is not subject to enforcement of a money judgment until paid to the beneficiary.

NEW SECTION. **Section 25.** Restraint on transfer of principal. (1) Except as provided in subsection (2) and in [section 28], if the trust instrument provides that a beneficiary's interest in principal is not subject to voluntary or involuntary transfer, the beneficiary's interest in principal may not be transferred and is not subject to enforcement of a money judgment until paid to the beneficiary.

(2) After an amount of principal has become due and payable to the beneficiary under the trust instrument, upon petition to the court by a judgment creditor, the court may make an order directing the trustee to satisfy the money judgment out of that principal amount. The court in its discretion may issue an order directing the trustee to satisfy all or part of the judgment out of that principal

amount.

NEW SECTION. **Section 26.** Trust for support. Except as provided in [section 28], if the trust instrument provides that the trustee shall pay income or principal or both for the education or support of a beneficiary, the beneficiary's interest in income or principal or both under the trust may not be transferred and is not subject to the enforcement of a money judgment until paid to the beneficiary.

NEW SECTION. **Section 27.** Transferee or creditor cannot compel trustee to exercise discretion -- liability of trustee for payment to or for beneficiary. (1) If the trust instrument provides that the trustee shall pay to or for the benefit of a beneficiary so much of the income or principal or both as the trustee in the trustee's discretion sees fit to pay, a transferee or creditor of the beneficiary may not compel the trustee to pay any amount that may be paid only in the exercise of the trustee's discretion.

(2) If the trustee has knowledge of the transfer of the beneficiary's interest or has been served with process by a judgment creditor seeking to reach the beneficiary's interest, and the trustee pays to or for the benefit of the beneficiary any part of the income or principal that may be paid only in the exercise of the trustee's discretion, the trustee is liable to the transferee or creditor to the extent that the payment to or for the benefit of the

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beneficiary impairs the right of the transferee or creditor. This subsection does not apply if the beneficiary's interest in the trust is subject to a restraint on transfer that is valid under [section 24 or 25].

(3) This section applies regardless of whether the trust instrument provides a standard for the exercise of the trustee's discretion.

(4) Nothing in this section limits any right the beneficiary may have to compel the trustee to pay to or for the benefit of the beneficiary all or part of the income or principal.

NEW SECTION. **Section 28.** Where trustor is beneficiary. (1) If the trustor is a beneficiary of a trust created by the trustor and the trustor's interest is subject to a provision restraining the voluntary or involuntary transfer of the trustor's interest, the restraint is invalid against transferees or creditors of the trustor. The invalidity of the restraint on transfer does not affect the validity of the trust.

(2) If the trustor is the beneficiary of a trust created by the trustor and the trust instrument provides that the trustee shall pay income or principal or both for the education or support of the beneficiary or gives the trustee the discretion to determine the amount of income or principal or both to be paid to or for the benefit of the

trustor, a transferee or creditor of the trustor may reach the maximum amount that the trustee could pay to or for the benefit of the trustor under the trust instrument, not exceeding the amount of the trustor's proportionate contribution to the trust.

NEW SECTION. **Section 29.** Disclaimer not a transfer. A disclaimer or renunciation by a beneficiary of all or part of his interest under a trust shall not be considered a transfer under [section 24 or 25].

NEW SECTION. **Section 30.** Presumption of revocability. Unless a trust is expressly made irrevocable by the trust instrument, the trust is revocable by the trustor. This section applies only where the trustor is domiciled in this state when the trust is created, where the trust instrument is executed in this state, or where the trust instrument provides that the law of this state governs the trust.

NEW SECTION. **Section 31.** Method of revocation by trustor. (1) A trust that is revocable by the trustor may be revoked in whole or in part by any of the following methods:

(a) by compliance with any method of revocation provided in the trust instrument; or

(b) by a writing (other than a will) signed by the trustor and delivered to the trustee during the lifetime of the trustor. If the trust instrument explicitly makes the method of revocation provided in the trust instrument the

exclusive method of revocation, the trust may not be revoked pursuant to this subsection.

(2) A trust may not be revoked by an attorney-in-fact under a power of attorney unless it is expressly permitted by the trust instrument.

(3) Nothing in this section limits the authority to modify or terminate a trust pursuant to [section 33 or 34] in an appropriate case.

(4) The manner of revocation of a trust revocable by the trustor that was created by an instrument executed before October 1, 1989, is governed by prior law and not by this section.

NEW SECTION. **Section 32.** Power to revoke includes power to modify. Unless the trust instrument provides otherwise, if a trust is revocable by the trustor, the trustor may modify the trust by the procedure for revocation.

NEW SECTION. **Section 33.** Modification or termination of irrevocable trust by all beneficiaries. (1) Except as provided in subsection (2), if all beneficiaries of an irrevocable trust consent, they may compel modification or termination of the trust upon petition to the court.

(2) If the continuance of the trust is necessary to carry out a material purpose of the trust, the trust cannot be modified or terminated unless the court, in its

discretion, determines that the reason for doing so under the circumstances outweighs the interest in accomplishing a material purpose of the trust. Under this section the court does not have discretion to permit termination of a trust that is subject to a valid restraint on transfer of the beneficiary's interest as provided in [sections 24 through 29].

NEW SECTION. **Section 34. Modification or termination by trustor and all beneficiaries.** (1) If the trustor and all beneficiaries of a trust consent, they may compel the modification or termination of the trust.

(2) If any beneficiary does not consent to the modification or termination of the trust, upon petition to the court, the other beneficiaries, with the consent of the trustor, may compel a modification or a partial termination of the trust if the interests of the beneficiaries who do not consent are not substantially impaired.

(3) If the trust provides for the disposition of principal to a class of persons described only as "heirs" or "next of kin" of the trustor, or using other words that describe the class of all persons who would take under the rules of intestacy, the court may limit the class of beneficiaries whose consent is needed to compel the modification or termination of the trust to the beneficiaries who are reasonably likely to take under the

circumstances.

NEW SECTION. **Section 35. Guardian ad litem.** For the purposes of [sections 33 and 34], the consent of a beneficiary who is legally incapacitated, unascertained, or unborn may be given in proceedings before the court by a guardian ad litem, if it would be appropriate to do so. In this case the guardian ad litem may rely on general family benefit accruing to living members of the beneficiary's family as a basis for approving a modification or termination of the trust.

NEW SECTION. **Section 36. No conclusive presumption of fertility.** In determining the class of beneficiaries whose consent is necessary to modify or terminate a trust pursuant to [section 33 or 34], the presumption of fertility is rebuttable.

NEW SECTION. **Section 37. Termination of trusts -- trustee's powers on termination.** (1) A trust terminates when any of the following occurs:

(a) the term of the trust expires;

(b) the trust purpose is fulfilled;

(c) the trust purpose becomes unlawful;

(d) the trust purpose becomes impossible to fulfill; or

(e) the trust is revoked.

(2) On termination of the trust, the trustee continues

to have the powers reasonably necessary under the circumstances to wind up the affairs of the trust.

NEW SECTION. **Section 38. Trust with uneconomically low principal.** (1) On petition by a trustee or beneficiary, if the court determines that the fair market value of the principal of a trust has become so low in relation to the cost of administration that continuation of the trust under its existing terms will defeat or substantially impair the accomplishment of its purposes, the court may, in its discretion and in a manner that conforms as nearly as possible to the intention of the trustor, order any of the following:

(a) termination of the trust;

(b) modification of the trust; or

(c) appointment of a new trustee.

(2) Notwithstanding subsection (1), if the trust principal does not exceed $20,000 in value, the trustee has the power to terminate the trust.

(3) The existence of a trust provision restraining transfer of the beneficiary's interest does not prevent application of this section.

NEW SECTION. **Section 39. Modification or termination.** (1) On petition by a trustee or beneficiary, the court may modify the administrative or dispositive provisions of the trust or terminate the trust if the continuation of the

trust under its terms would defeat or substantially impair the accomplishment of the purposes of the trust, whether by the imposition of tax, the allocation of beneficial interest inconsistent with such purposes, or by other reason. In this case, if necessary to carry out the purposes of the trust, the court may order the trustee to do acts that are not authorized or are forbidden by the trust instrument.

(2) The court shall consider a trust provision restraining transfer of the beneficiary's interest as a factor in making its decision whether to modify or terminate the trust, but the court is not precluded from exercising its discretion to modify or terminate the trust solely because of a restraint on transfer.

NEW SECTION. **Section 40. Disposition of property upon termination.** At the termination of a trust, the trust property shall be disposed of as follows:

(1) In the case of a trust that is revoked by the trustor, as directed by the trustor.

(2) In the case of a trust that is terminated by the consent of the trustor and all beneficiaries, as agreed by the trustor and all beneficiaries.

(3) In any other case, as provided in the trust instrument or in a manner directed by the court that conforms as nearly as possible to the intention of the trustor as expressed in the trust instrument. If a trust is

terminated by the trustee pursuant to [section 38(2)], the trust property shall be distributed as determined by the trustee pursuant to this subsection.

NEW SECTION. **Section 41.** Combination of similar trusts. If the terms of two or more trusts are substantially similar, on petition by a trustee or beneficiary, the court, for good cause shown, may combine the trusts if the court determines that administration as a single trust will not defeat or substantially impair the accomplishment of the trust purposes or the interests of the beneficiaries.

NEW SECTION. **Section 42.** Division of trusts. On petition by a trustee or beneficiary, the court, for good cause shown, may divide a trust into two or more separate trusts, if the court determines that dividing the trust will not defeat or substantially impair the accomplishment of the trust purposes or the interests of the beneficiaries.

NEW SECTION. **Section 43.** Charitable trust. A charitable trust, or the charitable portion of a trust, subjects the trustee to equitable duties to deal with the trust property for a charitable purpose.

NEW SECTION. **Section 44.** Charitable purposes. Charitable purposes include:

(1) the relief of poverty;

(2) the advancement of education;

(3) the advancement of religion;

(4) the promotion of health;

(5) governmental or municipal purposes; or

(6) other purposes the accomplishment of which are beneficial to the community.

NEW SECTION. **Section 45.** Enforcement of a charitable trust. The attorney general, a cotrustee, or a person who has a special interest in the enforcement of the charitable trust can maintain a suit for the enforcement of a charitable trust, but not persons who have no special interest or the trustor or his heirs or personal representative.

NEW SECTION. **Section 46.** Cy pres doctrine. If property is given in trust to be applied to a particular charitable purpose, and it is or becomes impossible, impracticable, or illegal to carry out the particular purpose, and if the trustor manifested a general intention to devote the property to charitable purposes, the trust need not fail. The court may direct the application of the property to some charitable purpose which falls within the general charitable intention of the trustor.

NEW SECTION. **Section 47.** Acceptance of trust by trustee. (1) The person named as trustee may accept the trust, or a modification of the trust, by one of the following methods:

(a) signing the trust instrument or the trust

instrument as modified, or signing a separate written acceptance; or

(b) knowingly exercising powers or performing duties under the trust instrument or the trust instrument as modified, except as provided in subsection (2).

(2) In a case where there is an immediate risk of damage to the trust property, the person named as trustee may act to preserve the trust property without accepting the trust or a modification of the trust, if within reasonable time after acting the person delivers a written rejection of the trust or the modification of the trust to the trustor or, if the trustor is dead or incompetent, to a beneficiary. This subsection does not impose a duty on the person named as trustee to act.

NEW SECTION. **Section 48.** **Rejection of trust -- nonliability of person who rejects trust.** (1) A person named as trustee may in writing reject the trust or a modification of the trust.

(2) If the person named as trustee does not accept the trust or a modification of the trust by a method provided in [section 47(1)] within a reasonable time after learning of being named as trustee or of the modification, the person has rejected the trust or the modification.

(3) A person named as trustee who rejects the trust or a modification of the trust is not liable with respect to

the rejected trust or modification.

NEW SECTION. **Section 49.** **Trustee's bond.** (1) A trustee is not required to give a bond to secure performance of the trustee's duties, unless either of the following circumstances occur:

(a) A bond is required by the trust instrument.

(b) Notwithstanding a waiver of bond in the trust instrument, a bond is found by the court to be necessary to protect the interests of beneficiaries.

(2) Notwithstanding subsection (1)(a), the court may excuse a requirement of a bond, reduce or increase the amount of a bond, release a surety, permit the substitution of another bond with the same or different sureties, or accept another form of security.

(3) If a bond is required, it shall be filed or served, in the amount, and with sureties and liabilities as provided in the trust instrument or as ordered by the court.

(4) Except as otherwise provided in the trust instrument or ordered by the court, the cost of the bond shall be charged against the trust.

(5) A trust company may not be required to give a bond, notwithstanding a contrary provision in the trust instrument.

NEW SECTION. **Section 50.** **Certificate of trustee.** On application by the trustee, the clerk of the district court

shall issue a certificate that the trustee is a duly appointed and acting trustee under the trust if the court file shows the incumbency of the trustee.

NEW SECTION. **Section 51.** Cotrustees. (1) Unless otherwise provided in the trust instrument, a power vested in two trustees may only be exercised by their unanimous action.

(2) Unless otherwise provided in the trust instrument, a power vested in three or more trustees may be exercised by a majority of such trustees.

NEW SECTION. **Section 52.** Vacancy in office of cotrustee. Unless otherwise provided in the trust instrument, if a vacancy occurs in the office of a cotrustee, the remaining cotrustee or cotrustees may act for the trust as if they are the only trustees.

NEW SECTION. **Section 53.** Temporary incapacity of cotrustee. Unless otherwise provided in the trust instrument, if a cotrustee is unavailable to perform the duties of the cotrustee because of absence, illness, or other temporary incapacity, the remaining cotrustee or cotrustees may act for the trust when necessary to accomplish the purposes of the trust or to avoid irreparable injury to the trust property as if they are the only trustees.

NEW SECTION. **Section 54.** Resignation of the trustee.

(1) A trustee who has accepted the trust may resign only by one of the following methods:

(a) as provided in the trust instrument;

(b) in the case of a revocable trust, with the consent of the person holding the power to revoke the trust;

(c) in the case of a trust that is not revocable, with the consent of only all of the adult beneficiaries who are receiving or are entitled to receive income under the trust or to receive a distribution of principal if the trust were terminated at the time consent is sought; or

(d) pursuant to a court order obtained as provided in subsection (2).

(2) On petition by the trustee, the court shall accept the trustee's resignation. The court may also make any orders necessary for the preservation of the trust property, including the appointment of a receiver or a temporary trustee.

NEW SECTION. **Section 55.** Liability upon resignation. The liability for acts or omissions of a resigning trustee or of the sureties on the trustee's bond, if any, is not released or affected in any manner by the trustee's resignation.

NEW SECTION. **Section 56.** Removal of a trustee. (1) A trustee may be removed in accordance with the trust instrument or by the court on its own motion or on petition

of a cotrustee or beneficiary.

(2) The grounds for removal of a trustee by the court include the following:

(a) if the trustee has committed a breach of the trust;

(b) if the trustee is insolvent or otherwise unfit to administer the trust;

(c) if hostility or lack of cooperation among cotrustees impairs the administration of the trust;

(d) if the trustee fails or declines to act; or

(e) for other good cause.

(3) If it appears to the court that trust property or the interests of a beneficiary may suffer loss or injury pending a decision on a petition for removal of a trustee and any appellate review, the court may, on its own motion or on petition of a cotrustee or beneficiary, compel the trustee whose removal is sought to surrender trust property to a cotrustee or to a receiver or temporary trustee. The court may also suspend the powers of the trustee to the extent the court considers necessary.

NEW SECTION. **Section 57.** Vacancy in office of trustee. There is a vacancy in the office of trustee in any of the following circumstances:

(1) The person named as trustee rejects the trust.

(2) The person named as trustee cannot be identified

or does not exist.

(3) The trustee resigns or is removed.

(4) The trustee dies.

(5) A conservator or guardian of an individual trustee is appointed.

(6) A certificate of incorporation of a trust company is revoked or its powers are suspended, if the revocation or suspension is to be in effect for a period of 30 days or more.

(7) A receiver is appointed for a trust company if the appointment is not vacated within a period of 30 days.

NEW SECTION. **Section 58.** Delivery of property by former trustee upon occurrence of vacancy. When a vacancy has occurred in the office of trustee, the former trustee who holds property of the trust shall deliver the trust property to the successor trustee or a person appointed by the court to receive the property and remains responsible for the trust property until it is delivered. A trustee who has resigned or is removed has the powers reasonably necessary under the circumstances to preserve the trust property until it is delivered to the successor trustee and to perform actions necessary to complete the resigning or removed trustee's administration of the trust.

NEW SECTION. **Section 59.** Appointment of trustee to fill vacancy. (1) If the trust has no trustee or if the

trust instrument requires a vacancy in the office of a cotrustee to be filled, the vacancy shall be filled as provided in this section.

(2) If the trust instrument provides a practical method of appointing a trustee or names the person to fill the vacancy, the vacancy shall be filled as provided in the trust instrument.

(3) If the vacancy in the office of trustee is not filled as provided in subsection (2), on petition of a cotrustee or beneficiary the court may, in its discretion, appoint a trustee to fill the vacancy. If the trust provides for more than one trustee, the court may, in its discretion, appoint the original number or any lesser number of trustees. In selecting a trustee, the court shall give consideration to the wishes of the beneficiaries who are 14 years of age or older.

NEW SECTION. **Section 60. Capacity of trustee.** (1) The trustee must have the legal capacity to take, hold, and transfer the trust property. The trustee may be a natural person or a corporation or trust company. If the trustee is a corporation, it must be qualified to act as a trustee in this state.

(2) A beneficiary of a trust may be the trustee of the trust.

(3) The trustor of a trust may be the trustee of the

trust.

NEW SECTION. **Section 61. Trustee's compensation as provided in trust instrument -- different compensation.** (1) Subject to subsection (2), if the trust instrument provides for the trustee's compensation, the trustee is entitled to be compensated in accordance with the trust instrument.

(2) Upon proper showing, the court may fix or allow greater or lesser compensation than could be allowed under the terms of the trust in any of the following circumstances:

(a) whenever the duties of the trustee are substantially different from those contemplated when the trust was created;

(b) whenever the compensation in accordance with the terms of the trust would be inequitable or unreasonably low or high; or

(c) in extraordinary circumstances calling for equitable relief.

(3) An order fixing or allowing greater or lesser compensation under subsection (2) applies only prospectively to actions taken in administration of the trust after the order is made.

NEW SECTION. **Section 62. Trustee's compensation where trust silent.** If the trust instrument does not specify the trustee's compensation, the trustee is entitled to

reasonable compensation.

NEW SECTION. **Section 63. Compensation for services rendered in making temporary investments.** In addition to other compensation to which the trustee is entitled, the trustee is entitled to make a reasonable charge for services rendered in making temporary investments.

NEW SECTION. **Section 64. Court determination of prospective compensation.** The court may fix an amount of periodic compensation under [sections 61 and 62] to continue for as long as the court determines is proper.

NEW SECTION. **Section 65. Compensation of cotrustees.** Unless the trust instrument otherwise provides or the trustees otherwise agree, if the trust has two or more trustees, the compensation shall be apportioned among the cotrustees according to the services rendered by them.

NEW SECTION. **Section 66. Repayment of trustee for expenditures.** A trustee is entitled to the repayment out of the trust property for the following:

(1) expenditures that were properly incurred in the administration of the trust; and

(2) to the extent that they benefited the trust, expenditures that were not properly incurred in the administration of the trust.

NEW SECTION. **Section 67. Trustee's lien.** The trustee has an equitable lien on the trust property as against the

beneficiary in the amount of advances, with any interest, made for the protection of the trust, and for expenses, losses, and liabilities sustained in the administration of the trust or because of ownership or control of any trust property.

NEW SECTION. **Section 68. Limits on rights of beneficiary of revocable trust.** Except to the extent that the trust instrument otherwise provides or where the joint action of the trustor and all beneficiaries is required, during the time that a trust is revocable and the person holding the power to revoke the trust is competent:

(1) The person holding the power to revoke, and not the beneficiary, has the rights afforded beneficiaries under [sections 1 through 215].

(2) The duties of the trustee are owed to the person holding the power to revoke.

NEW SECTION. **Section 69. Consent by beneficiary of revocable trust.** (1) In any case where the consent of a beneficiary may be given or is required to be given before an action may be taken, during the time that a trust is revocable and the person holding the power to revoke the trust is competent, the person holding the power to revoke, and not the beneficiary, has the power to consent or withhold consent.

(2) This section does not apply where the joint

consent of the trustor and all beneficiaries is required by statute.

NEW SECTION. **Section 70.** Notice to beneficiary of revocable trust. Notwithstanding any other statute, during the time that a trust is revocable and the person holding the power to revoke the trust is competent, a notice that is to be given to a beneficiary shall be given to the person holding the power to revoke and not to the beneficiary.

NEW SECTION. **Section 71.** Rights of holder of power of appointment or withdrawal. The holder of a presently exercisable general power of appointment or power to withdraw property from the trust has the rights of a trustor provided by [sections 68 through 70], inclusive, to the extent of the holder's power over the trust property.

NEW SECTION. **Section 72.** Notice in case involving future interest of beneficiary. (1) Subject to subsections (2) and (3), it is sufficient compliance with a requirement in [sections 1 through 215] that notice be given to a beneficiary, or to a person interested in the trust, if notice is given as follows:

(a) Whenever an interest has been limited on any future contingency to persons who will compose a certain class upon the happening of a certain event without further limitation, notice shall be given to the persons in being who would constitute the class if the event had happened

immediately before the commencement of the proceedings.

(b) Whenever an interest has been limited to a living person and the same interest, or a share therein, has been further limited upon the happening of a future event to the surviving spouse or to persons who are or may be the distributees, heirs, issue, or other kindred of the living persons, notice shall be given to the living person.

(c) Whenever an interest has been limited upon the happening of any future event to a person, or a class of persons, or both, and the interest, or a share of the interest, has been further limited upon the happening of an additional future event to another person, or a class of persons, or both, notice shall be given to the person or persons in being who would take the interest upon the happening of the first of these events.

(2) If a conflict of interest involving the subject matter of the trust proceeding exists between a person to whom notice is required to be given and a person to whom notice is not otherwise required to be given under subsection (1), notice shall also be given to persons not otherwise entitled to notice under subsection (1) with respect to whom the conflict of interest exists.

(3) Nothing in this section affects any of the following:

(a) requirements for notice to:

(i) a person who has requested special notice;

(ii) a person who has filed notice of appearance; or

(iii) a particular person or entity required by statute to be given notice.

(b) Availability of a guardian ad litem pursuant to [section 187].

NEW SECTION. **Section 73. Duty to administer trust.** On acceptance of the trust, the trustee has a duty to administer the trust according to the trust instrument and, except to the extent the trust instrument provides otherwise, according to [sections 1 through 215].

NEW SECTION. **Section 74. Duties of trustee of revocable trust.** (1) Except as provided in subsection (2), the trustee of a revocable trust shall follow any written direction acceptable to the trustee given from time to time:

(a) by the person then having the power to revoke the trust or the part thereof with respect to which the direction is given; or

(b) by the person to whom the trustor delegates the right to direct the trustee.

(2) If a written direction given under subsection (1) would have the effect of modifying the trust, the trustee has no duty to follow the direction unless it complies with the requirements for modifying the trust.

NEW SECTION. **Section 75. Duty of loyalty.** (1) The

trustee has a duty to administer the trust solely in the interest of the beneficiaries.

(2) It is not a violation of the duty provided in subsection (1) for a trustee who administers two trusts to sell, exchange, or participate in the sale or exchange of trust property between the trusts, if both of the following requirements are met:

(a) the sale or exchange is fair and reasonable with respect to the beneficiaries of both trusts; and

(b) the trustee gives to the beneficiaries of both trusts notice of all material facts related to the sale or exchange that the trustee knows or should know.

NEW SECTION. **Section 76. Duty to deal impartially with beneficiaries.** If a trust has two or more beneficiaries, the trustee has a duty to deal impartially with them.

NEW SECTION. **Section 77. Duty to avoid conflict of interest.** (1) The trustee has a duty not to use or deal with trust property for the trustee's own profit or for any other purpose unconnected with the trust, nor to take part in any transaction in which the trustee has an interest adverse to the beneficiary.

(2) The trustee may not enforce any claim against the trust property that the trustee purchased after or in contemplation of appointment as trustee, but the court may

allow the trustee to be reimbursed from trust property the amount that the trustee paid for the claim.

(3) A transaction between the trustee and a beneficiary which occurs during the existence of the trust or while the trustee's influence with the beneficiary remains and by which the trustee obtains an advantage from the beneficiary is presumed to be a violation of the trustee's fiduciary duties. This presumption is a presumption affecting the burden of proof. This subsection does not apply to the provisions of an agreement between a trustee and a beneficiary relating to the hiring or compensation of the trustee.

NEW SECTION. **Section 78.** **Duty not to undertake adverse trust.** The trustee of one trust has a duty not to knowingly become a trustee of another trust adverse in its nature to the interest of the beneficiary of the first trust, and a duty to eliminate the conflict or resign as trustee when the conflict is discovered.

NEW SECTION. **Section 79.** **Duty to take control of and preserve trust property.** The trustee has a duty to take reasonable steps under the circumstances to take and keep control of and to preserve the trust property.

NEW SECTION. **Section 80.** **Duty to make trust property productive.** The trustee has a duty to make the trust property productive under the circumstances and in

furtherance of the purposes of the trust.

NEW SECTION. **Section 81.** **Duty to dispose of improper investments.** (1) Except as provided in subsection (2), the trustee has a duty within a reasonable time to dispose of any part of the trust property included in the trust at the time of its creation, or later acquired by or added to the trust, that would not be a proper investment for the trustee to make.

(2) Unless the trust instrument expressly provides otherwise, the trustee may, without liability, continue to hold property included in the trust at its creation or later added to the trust or acquired pursuant to proper authority, if retention is in the best interests of the trust or in furtherance of the purposes of the trust.

NEW SECTION. **Section 82.** **Duty to keep trust property separate and identified.** The trustee has a duty to do the following:

(1) to keep the trust property separate from other property not subject to the trust; and

(2) to see that the trust property is designated as property of the trust.

NEW SECTION. **Section 83.** **Duty to enforce claims.** The trustee has a duty to take reasonable steps to enforce claims that are part of the trust property.

NEW SECTION. **Section 84.** **Duty to defend actions.** The

trustee has a duty to take reasonable steps to defend actions that may result in a loss to the trust.

NEW SECTION. **Section 85.** Duty not to delegate. (1) The trustee has a duty not to delegate to others the performance of acts that the trustee can reasonably be required personally to perform and may not transfer the office of trustee to another person nor delegate the entire administration of the trust to a cotrustee or other person.

(2) In a case where a trustee has properly delegated a matter to an agent, cotrustee, or other person, the trustee has a duty to exercise general supervision over the person performing the delegated matter.

NEW SECTION. **Section 86.** Duty with respect to cotrustees. If a trust has more than one trustee, each trustee has a duty to do the following:

(1) to participate in the administration of the trust; and

(2) to take reasonable steps to prevent a cotrustee from committing a breach of trust or to compel a cotrustee to redress a breach of trust.

NEW SECTION. **Section 87.** Duty to use special skills. (1) The trustee has a duty to apply the full extent of the trustee's skills.

(2) If the trustor, in selecting the trustee, has relied on the trustee's representation of having special

skills, the trustee is held to the standard of the skills represented.

NEW SECTION. **Section 88.** Certain actions not violations of duties. The provision of services for compensation by a regulated financial institution or its affiliates in the ordinary course of business either to a trust of which it also acts as trustee or to a person dealing with the trust is not a violation of the duty provided in [section 75 or 77]. For the purposes of this section, "affiliate" means a corporation that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with another domestic or foreign corporation.

NEW SECTION. **Section 89.** Duty to use ordinary skill and prudence. (1) The trustee shall administer the trust with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person would use to accomplish the purposes of the trust as determined from the trust instrument.

(2) When investing, reinvesting, purchasing, acquiring, exchanging, selling, and managing trust property, the trustee shall act with the care, skill, prudence, and diligence under the circumstances then prevailing, including but not limited to the general economic conditions and the anticipated needs of the trust and its beneficiaries, that a

prudent person would use to accomplish the purposes of the trust as determined from the trust instrument. In the course of administering the trust pursuant to this standard, individual investments shall be considered as part of an overall investment strategy.

(3) The trustor may expand or restrict the standards provided in subsections (1) and (2) by express provisions in the trust instrument. A trustee is not liable to a beneficiary for the trustee's reliance on these express provisions.

NEW SECTION. **Section 90.** **Standard of care not affected by compensation.** A trustee's standard of care and performance in administering the trust is not affected by whether or not the trustee receives any compensation.

NEW SECTION. **Section 91.** **Interpretation of trust terms concerning legal investments.** If a trust created before, on, or after October 1, 1989, refers to "investments permissible by law for investment of trust funds", "authorized by law for investment of trust funds", "legal investments", "authorized investments", or "investments acquired using the judgment and care which men of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income, as well as the probable

safety of their capital", or uses other words of similar meaning in defining the powers of the trustee relative to investments, such language, in the absence of other controlling or modifying provisions of the trust instrument, shall be construed as imposing the standard of care provided by [section 89] and authorizing any investment permitted under [sections 105 through 137].

NEW SECTION. **Section 92.** **Trustee's general duty to report information to beneficiaries.** The trustee has a duty to keep the beneficiaries of the trust reasonably informed of the trust and its administration.

NEW SECTION. **Section 93.** **Duty to report information about trust on request.** Except as provided in [section 95], on reasonable request by a beneficiary, the trustee shall provide the beneficiary with a report of information about the assets, liabilities, receipts, and disbursements of the trust, the acts of the trustee, and the particulars relating to the administration of the trust relevant to the beneficiary's interest, including the terms of the trust that describe or affect the beneficiary's interest.

NEW SECTION. **Section 94.** **Duty to provide annual statement to income beneficiaries.** Except as provided in [section 95], the trustee shall annually mail each income beneficiary an itemized statement of all current receipts and disbursements of both principal and income.

NEW SECTION. **Section 95.** **Exceptions to duty to report information and to provide annual statement.** The trustee is not required to report information or to provide an annual statement to a beneficiary in any of the following circumstances:

(1) to the extent the trust instrument waives the report or annual statement;

(2) in the case of a beneficiary of a revocable trust, as provided in [section 68].

(3) as to a beneficiary who has waived in writing the right to a report or annual statement. A waiver of rights under this subsection may be withdrawn in writing at any time as to the most recent annual statement or future annual statements. A waiver has no effect of the beneficiary's right to petition for a report, statement, or account pursuant to [section 179]; or

(4) if the beneficiary and the trustee are the same person.

NEW SECTION. **Section 96.** **Permissive accounts.** At any time during the term of the trust or upon the termination of the trust, the trustee may mail an account to trust beneficiaries. To effectively bar a beneficiary from an action against the trustee pursuant to [section 159], the account must contain the following information:

(1) a statement of receipts and disbursements of

principal and income that have occurred since the last account;

(2) a statement of the assets and liabilities of the trust since the last account;

(3) the trustee's compensation since the last account;

(4) the agents hired by the trustee, their relationship to the trustee, if any, and their compensation since the last account;

(5) a statement that the recipient of the account may petition the court pursuant to [section 179] to obtain a court review of the account and of the acts of the trustee; and

(6) a statement that claims against the trustee for breach of trust may not be made after the expiration of 3 years from the date the beneficiary receives an account disclosing facts giving rise to the claim.

NEW SECTION. **Section 97.** **Discretionary powers to be exercised reasonably.** Except as provided in [section 98], a discretionary power conferred upon a trustee is not left to the trustee's arbitrary discretion, but shall be exercised reasonably.

NEW SECTION. **Section 98.** **Standard for exercise of "absolute", "sole", or "uncontrolled" powers.** (1) Subject to the additional requirements of subsection (2), if a trust instrument confers "absolute", "sole", or "uncontrolled"

discretion on a trustee, the trustee shall act in accordance with fiduciary principles and may not act in disregard of the purposes of the trust.

(2) Notwithstanding the trustor's use of terms like "absolute", "sole", or "uncontrolled", a person who is a beneficiary of a trust and who, either individually or as trustee or cotrustee, holds a power to take or distribute income or principal to or for the benefit of himself or herself pursuant to a standard, shall exercise that power reasonably and in accordance with the standard. In any case in which the standard governing the exercise of the power does not clearly indicate that a broader power is intended, the holder of the power may exercise it in his or her favor only for his or her health, education, support, or maintenance.

NEW SECTION. **Section 99.** Definitions. As used in [sections 99 through 104], the following definitions apply:

(1) "Charitable trust" means a charitable trust as described in section 4947(a)(1) of the Internal Revenue Code.

(2) "Private foundation" means a private foundation as defined in section 509 of the Internal Revenue Code.

(3) "Split-interest trust" means a split-interest trust as described in section 4947(a)(2) of the Internal Revenue Code.

NEW SECTION. **Section 100.** Distribution under charitable trust or private foundation. During any period when a trust is considered to be a charitable trust or a private foundation, the trustee shall distribute its income for each taxable year (and principal if necessary) at a time and in a manner that will not subject the property of the trust to tax under section 4942 of the Internal Revenue Code.

NEW SECTION. **Section 101.** Restrictions on trustees under charitable trust, private foundations, or split-interest trust. During any period when a trust is considered to be a charitable trust, a private foundation, or a split-interest trust, the trustee may not do any of the following:

(1) engage in any act of self-dealing as defined in section 4941(d) of the Internal Revenue Code;

(2) retain any excess business holdings as defined in section 4943(c) of the Internal Revenue Code;

(3) make any investments in such manner as to subject the property of the trust to tax under section 4944 of the Internal Revenue Code; or

(4) make any taxable expenditure as defined in section 4945(d) of the Internal Revenue Code.

NEW SECTION. **Section 102.** Exceptions applicable to split-interest trusts. With respect to split-interest

trusts:

(1) [Subsections (2) and (3) of section 101] do not apply to any trust described in section 4947(b)(3) of the Internal Revenue Code.

(2) [Section 101] does not apply with respect to any of the following:

(a) any amounts payable under the terms of such trust to income beneficiaries, unless a deduction was allowed under section 170(f)(2)(B), 2055(e)(2)(B), or 2522(c)(2)(B) of the Internal Revenue Code;

(b) any amounts in trust other than amounts for which a deduction was allowed under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522 of the Internal Revenue Code, if the amounts are segregated, as that term is defined in section 4947(a)(3) of the Internal Revenue Code, from amounts for which no deduction was allowable; or

(c) any amounts irrevocably transferred in trust before May 27, 1969.

NEW SECTION. **Section 103. Incorporation in trust instruments.** The provisions of [sections 100 through 102] shall be considered to be contained in the instrument creating every trust to which [sections 99 through 104] apply. Any provision of the instrument inconsistent with or contrary to [sections 99 through 104] is without effect.

NEW SECTION. **Section 104. Proceedings.** (1) A

proceeding contemplated by section 101(1)(3) of the federal Tax Reform Act of 1969 (Public Law 91-172) may be commenced pursuant to [section 179] by the organization involved. All specifically named beneficiaries of the organization and the attorney general shall be parties to the proceedings. Notwithstanding [section 165], this provision is not exclusive and does not limit any jurisdiction that otherwise exists.

(2) If an instrument creating a trust affected by this section has been recorded, a notice of pendency of judicial proceedings under this section shall be recorded in a similar manner within 10 days from the commencement of the proceedings. A duly certified copy of any final judgment or decree in the proceedings shall be similarly recorded.

NEW SECTION. **Section 105. General powers of trustee.** A trustee has the following powers without the need to obtain court authorization:

(1) the powers conferred by the trust instrument;

(2) except as limited in the trust instrument, the powers conferred by statute; and

(3) except as limited in the trust instrument, the power to perform any act that a trustee would perform for the purposes of the trust under the standard of care provided in [section 89].

NEW SECTION. **Section 106.** Power of court to relieve

trustee from restrictions on powers. [Sections 109 through 137] do not affect the power of a court to relieve a trustee from restrictions on the exercise of powers under the trust instrument.

NEW SECTION. **Section 107. Exercise of powers subject to trustee's duties.** The grant of a power to a trustee, whether by the trust instrument, by statute, or by the court, does not in itself require or permit the exercise of the power. The exercise of a power by a trustee is subject to the trustee's fiduciary duties.

NEW SECTION. **Section 108. Application of rules governing trustees' powers.** An instrument that incorporates the powers provided in former Title 72, chapter 21, ("Montana Trustees' Powers Act") shall be considered to refer to the powers provided [sections 109 through 137]. For this purpose, the trustee's powers under former Title 72, chapter 21, ("Montana Trustees' Powers Act") are not diminished and the trustee is not required to obtain court approval for exercise of a power for which court approval was not required by former law.

NEW SECTION. **Section 109. Collecting and holding property.** The trustee has the power to collect, hold, and retain trust property received from a trustor or any other person until, in the judgment of the trustee, disposition of the property should be made. The property may be retained

even though it includes property in which the trustee is personally interested.

NEW SECTION. **Section 110. Receiving additions to trust.** The trustee has the power to accept additions to the property of the trust from a trustor or any other person.

NEW SECTION. **Section 111. Participation in business -- change in form of business.** The trustee has the power to continue to participate in the operation of any business or other enterprise that is part of the trust property and may effect incorporation, dissolution, or other change in the form of the organization of the business or enterprise.

NEW SECTION. **Section 112. Investments.** The trustee has the power to invest in any kind of property, whether real, personal, or mixed.

NEW SECTION. **Section 113. Investments in obligations of United States government.** In the absence of an express provision to the contrary in a trust instrument, whenever the instrument directs or permits investment in obligations of the United States government, the trustee has the power to invest in those obligations directly or in the form of an interest in a money market mutual fund registered under the Investment Company Act of 1940 (15 U.S.C. section 80a-1 et seq.) or an investment vehicle authorized for the collective investment of trust funds pursuant to section 9.18 of Title 12 of the Code of Federal Regulations, the portfolios of

which are limited to United States government obligations and to repurchase agreements fully collateralized by United States government obligations.

NEW SECTION. **Section 114.** Deposits. (1) The trustee has the power to deposit trust funds at reasonable interest with any of the following:

(a) an insured commercial or savings bank;

(b) an insured building and loan association; or

(c) an insured credit union.

(2) A trustee may deposit trust funds as described in subsection (1) in a financial institution operated by, or that is an affiliate of, the trustee. For the purpose of this subsection, "affiliate" means a corporation that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with another domestic or foreign corporation.

(3) This section does not limit the power of a trustee in a proper case to deposit trust funds in institutions as described in subsection (1) that are subject to notice or other conditions respecting withdrawal prescribed by law or governmental regulation.

(4) Nothing in this section prevents the trustee from holding an amount of trust property reasonably necessary for the orderly administration of the trust in the form of cash or in a checking account without interest.

NEW SECTION. **Section 115.** Acquisition and disposition of property. The trustee has the power to acquire or dispose of property, for cash or on credit, at public or private sale, or by exchange.

NEW SECTION. **Section 116.** Management of property. The trustee has the power to manage, control, divide, develop, improve, exchange, partition, change the character of, or abandon trust property or any interest therein.

NEW SECTION. **Section 117.** Encumbrances. The trustee has the power to encumber, mortgage, or pledge trust property for a term within or extending beyond the term of the trust in connection with the exercise of any power vested in the trustee.

NEW SECTION. **Section 118.** Repairs and alterations of property. The trustee has the power to do any of the following:

(1) make ordinary or extraordinary repairs, alterations, improvements in buildings or other trust property;

(2) demolish any improvements; or

(3) raze existing or erect new party walls or buildings.

NEW SECTION. **Section 119.** Development of land. The trustee has the power to do any of the following:

(1) subdivide or develop land;

(2) dedicate land to public use;

(3) make or obtain the vacation of plats and adjust boundaries;

(4) adjust differences in valuation on exchange or partition by giving or receiving consideration; or

(5) dedicate easements to public use without consideration.

NEW SECTION. **Section 120.** **Leases.** The trustee has the power to enter into a lease for any purpose as lessor or lessee with or without the option to purchase or renew and for a term within or extending beyond the term of the trust.

NEW SECTION. **Section 121.** **Mineral leases.** The trustee has the power to enter into a lease or arrangement for exploration and removal of gas, oil, or other minerals, and to enter into a community oil lease or a pooling or utilization agreement, and for a term within or extending beyond the term of the trust.

NEW SECTION. **Section 122.** **Options.** The trustee has the power to grant an option involving disposition of trust property or to take an option for the acquisition of any property, and an option may be granted or taken that is exercisable beyond the term of the trust.

NEW SECTION. **Section 123.** **Voting rights with respect to corporate shares, memberships, or property.** With respect to any shares of stock of a domestic or foreign corporation,

any membership in a nonprofit corporation, or any other property, a trustee has the power to do any of the following:

(1) vote in person and give proxies to exercise any voting rights with respect to the shares, memberships, or property;

(2) waive notice of a meeting or give consent to the holding of a meeting; or

(3) authorize, ratify, approve, or confirm any action that could be taken by shareholders, members, or property owners.

NEW SECTION. **Section 124.** **Payment of calls and assessments.** The trustee has the power to pay calls, assessments, and any other sums chargeable or accruing against or on account of securities.

NEW SECTION. **Section 125.** **Stock subscriptions and conversions.** The trustee has the power to sell or exercise stock subscription or conversion rights.

NEW SECTION. **Section 126.** **Consent to change in form of business -- voting trusts.** The trustee has the power to consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise, and to participate in voting trusts, pooling arrangements, and foreclosures, and in connection therewith, to deposit

securities with and transfer title and delegate discretions to any protective or other committee as the trustee may consider advisable.

NEW SECTION. **Section 127.** **Holding securities in name of nominee.** The trustee has the power to hold a security in the name of a nominee or in other form without disclosure of the trust so that title to the security may pass by delivery, but the trustee is liable for any act of the nominee in connection with the security so held.

NEW SECTION. **Section 128.** **Insurance.** The trustee has the power to insure the property of the trust against damage or loss and to insure the trustee against liability with respect to third persons.

NEW SECTION. **Section 129.** **Borrowing money.** The trustee has the power to borrow money for any trust purpose to be repaid from trust property.

NEW SECTION. **Section 130.** **Payment and settlement of claims.** The trustee has the power to do any of the following:

(1) pay or contest any claim;

(2) settle a claim by or against the trust by compromise, arbitration, or otherwise; or

(3) release, in whole or in part, any claim belonging to the trust.

NEW SECTION. **Section 131.** **Payment of taxes, trustee's**

compensation, and other expenses. The trustee has the power to pay taxes, assessments, reasonable compensation of the trustee and of employees and agents of the trust, and other expenses incurred in the collection, care, administration, and protection of the trust.

NEW SECTION. **Section 132.** **Loans to beneficiary.** The trustee has the following powers:

(1) to make loans out of trust property to the beneficiary on terms and conditions that the trustee determines are fair and reasonable under the circumstances; and

(2) to guarantee loans to the beneficiary by encumbrances on trust property.

NEW SECTION. **Section 133.** **Distribution to beneficiaries under legal disability.** The trustee has the power to pay any sum distributable to a beneficiary, without regard to whether the beneficiary is under a legal disability, by paying the sum to the beneficiary or by paying the sum to another person for the use or benefit of the beneficiary.

NEW SECTION. **Section 134.** **Nature and value of distributions.** The trustee has the power to effect distribution of property and money in divided or undivided interests and to adjust resulting differences in valuation. A distribution in kind may be made pro rata or non-pro rata.

NEW SECTION. **Section 135.** Hiring persons. The trustee has the power to hire persons, including accountants, attorneys, auditors, investment advisors, or other agents, even if they are associated or affiliated with the trustee, to advise or assist the trustee in the performance of administrative duties.

NEW SECTION. **Section 136.** Execution and delivery of instruments. The trustee has the power to execute and deliver all instruments which are needed to accomplish or facilitate the exercise of the powers vested in the trustee.

NEW SECTION. **Section 137.** Actions and proceedings. The trustee has the power to prosecute or defend actions, claims, or proceedings for the protection of trust property and of the trustee in the performance of the trustee's duties.

NEW SECTION. **Section 138.** Short title. [Sections 138 through 150] may be cited as the "Revised Uniform Principal and Income Act".

NEW SECTION. **Section 139.** Definitions. As used in [sections 138 through 150], the following definitions apply:

(1) "Income beneficiary" means the person to whom income is presently payable or for whom it is accumulated for distribution as income.

(2) "Inventory value" means the adjusted basis for federal income tax purposes.

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(3) "Remainder beneficiary" means the person entitled to principal, including income which has been accumulated and added to principal.

(4) "Trustee" means the original trustee, any succeeding or added trustee, and the personal representative of a decedent's estate whenever a provision of this part is applicable to the estate.

NEW SECTION. **Section 140.** Duty of trustee as to receipts and expenditures. (1) A trust shall be administered with due regard to the respective interests of income beneficiaries and remainder beneficiaries. A trust is so administered with respect to the allocation of receipts and expenditures if a receipt is credited or an expenditure is charged to income or principal or partly to each in any of the following ways:

(a) in accordance with the terms of the trust instrument, notwithstanding contrary provisions of this part;

(b) in the absence of any contrary terms of the trust instrument, in accordance with the provisions of this part; or

(c) if neither subsection (a) nor (b) is applicable, in accordance with the standard of care provided in [section 89] and with what is reasonable and equitable in view of the interests of those entitled to income as well as of those

entitled to principal.

(2) If the trust gives the trustee discretion in crediting a receipt or charging an expenditure to income or principal or partly to each, no inference that the trustee has improperly exercised such discretion arises from the fact that the trustee has made an allocation contrary to a provision of this part.

NEW SECTION. **Section 141.** Income -- principal -- charges. (1) Income is the return in money or property derived from the use of principal, including return received as:

(a) rent of real or personal property, including sums received for cancellation or renewal of a lease;

(b) interest on money lent, including sums received as consideration for the prepayment of principal except as provided in [section 145] on bond premium and bond discount;

(c) income earned during administration of a decedent's estate as provided in [section 144];

(d) corporate distributions as provided in [section 145];

(e) accrued increment on bonds or other obligations issued at discount as provided in [section 145];

(f) receipts from business and farming operations as provided in [section 146];

(g) receipts from disposition of natural resources as

provided in [sections 147 and 148]; or

(h) receipts from other principal subject to depletion as provided in [section 149].

(2) Principal is the property which has been set aside by the owner or the person legally empowered so that it is held in trust eventually to be delivered to a remainder beneficiary, while the return or use of the principal is in the meantime taken or received by or held for accumulation for an income beneficiary. Principal includes the following:

(a) consideration received by the trustee on the sale or other transfer of principal or a repayment of a loan or as a refund or replacement or change in the form of principal;

(b) proceeds of property taken on eminent domain proceedings;

(c) proceeds of insurance upon property forming part of the principal except proceeds of insurance upon a separate interest of an income beneficiary;

(d) stock dividends, receipts on liquidation of a corporation, and other corporate distributions as provided in [section 144];

(e) receipts from the disposition of corporate securities as provided in [section 145];

(f) royalties and other receipts from disposition of natural resources as provided in [sections 147 and 148];

(g) receipts from other principal subject to depletion as provided in [section 149];

(h) any profit resulting from any change in the form of principal; or

(i) any allowances for depreciation established under [section 150(1)(b)].

(3) After determining income and principal in accordance with the terms of the trust instrument or of this part, the trustee shall charge to income or principal the expenses and other charges as provided in [section 150].

NEW SECTION. **Section 142. When right to income arises -- apportionment of income.** (1) An income beneficiary is entitled to income from the date specified in the trust instrument or, if none is specified, from the date an item of property becomes subject to the trust. In the case of an item of property becoming subject to a trust by reason of a person's death, it becomes subject to the trust as of the date of the death of the person even though there is an intervening period of administration of the person's estate.

(2) Upon property becoming subject to a trust by reason of a person's death:

(a) Receipts due but not paid at the date of death of the person are principal.

(b) Receipts in the form of periodic payments (other than corporate distributions to stockholders), including

rent, interest, or annuities, not due at the date of the death of the person shall be treated as accruing from day to day. That portion of the receipt accruing before the date of death is principal and the balance is income.

(3) In all other cases, any receipt from income-producing property is income even though the receipt was earned or accrued in whole or in part before the date when the property became subject to the trust.

(4) On termination of an income interest, the income beneficiary whose interest is terminated, or his or her estate, is entitled to income:

(a) undistributed on the date of termination;

(b) due but not paid to the trustee on the date of termination; and

(c) in the form of periodic payments (other than corporate distributions to stockholders), including rent, interest, or annuities, not due on the date of termination, accrued from day to day.

(5) Corporate distributions to stockholders shall be treated as due on the day fixed by the corporation for determination of stockholders of record entitled to distribution or, if no date is fixed, on the date of declaration of the distribution by the corporation.

NEW SECTION. **Section 143.** Income earned during administration of decedent's estate. (1) Unless the will

otherwise provides and subject to subsection (2), all expenses incurred in connection with the settlement of a decedent's estate, including debts, funeral expenses, estate taxes, interest and penalties concerning taxes, family allowances, fees of attorneys and personal representatives, and court costs, shall be charged against the principal of the estate.

(2) Unless the will otherwise provides, income from the property of a decedent's estate after the death of the testator and before distribution, including income from property used to discharge liabilities, shall be determined in accordance with the rules applicable to a trustee under [sections 1 through 164] and distributed as follows:

(a) to specific legatees and devisees, the income from the property bequeathed or devised to them respectively, less taxes, ordinary repairs, and other expenses of management and operation of the property, and an appropriate portion of interest accrued since the death of the testator and of taxes imposed on income (excluding taxes on capital gains) that accrue during the period of administration;

(b) to all other legatees and devisees, except legatees of pecuniary bequests not in trust, the balance of the income, less the balance of taxes, ordinary repairs, and other expenses of management and operation of all property from which the estate is entitled to income, interest

accrued since the death of the testator, and taxes imposed on income (excluding taxes on capital gains) that accrue during the period of administration, in proportion to their respective interests in the undistributed property of the estate computed at times of distribution on the basis of inventory value.

(3) Income received by a trustee under subsection (2) shall be treated as income of the trust.

NEW SECTION. **Section 144.** Corporate distributions. (1) Corporate distributions of shares of the distributing corporation, including distributions in the form of a stock split or stock dividend, are principal. A right to subscribe to shares or other securities issued by the distributing corporation accruing to stockholders on account of their stock ownership and the proceeds of any sale of the right, are principal.

(2) Except to the extent that the corporation indicates that some part of a corporate distribution is a settlement of preferred or guaranteed dividends accrued since the trustee became a stockholder or is in lieu of an ordinary cash dividend, a corporate distribution is principal if the distribution is pursuant to any of the following:

(a) a call of shares;

(b) a merger, consolidation, reorganization, or other

plan by which assets of the corporation are acquired by another corporation; or

(c) a total or partial liquidation of the corporation, including any distribution which the corporation indicates is a distribution in total or partial liquidation or any distribution of assets, other than cash, pursuant to a court decree or final administrative order by a government agency ordering distribution of the particular assets.

(3) Distributions made from ordinary income by a regulated investment company or by a trust qualifying and electing to be taxed under federal law as a real estate investment trust are income. All other distributions made by the company or trust, including distributions from capital gains, depreciation, or depletion, whether in the form of cash or an option to take new stock or cash or an option to purchase additional shares, are principal.

(4) Except as provided in subsections (1) through (3), all corporate distributions are income, including cash dividends, distributions of or rights to subscribe to shares or securities or obligations of corporations other than the distributing corporation, and the proceeds of the rights or property distributions. Except as provided in subsections (2) and (3), if the distributing corporation gives a stockholder an option to receive a distribution either in cash or in its own shares, the distribution chosen is

income.

(5) The trustee may rely upon any statement of the distributing corporation as to any fact relevant under any provision of this part concerning the source or character of dividends or distributions of corporate assets.

NEW SECTION. **Section 145.** Bond premium and discount. (1) Bonds or other obligations for the payment of money are principal at their inventory value, except as provided in subsection (2) for discount bonds. No provision shall be made for amortization of bond premiums or for accumulation for discount. The proceeds of sale, redemption, or other disposition of the bonds or obligations are principal.

(2) The increment in value of a bond or other obligation for the payment of money payable at a future time in accordance with a fixed schedule of appreciation in excess of the price at which it was issued is distributable as income. The increment in value is distributable to the beneficiary who was the income beneficiary at the time of increment from the first principal cash available or, if none is available, when realized by sale, redemption, or other disposition. Whenever unrealized increment is distributed as income but out of principal, the principal shall be reimbursed for the increment when realized.

NEW SECTION. **Section 146.** Business and farming operations. (1) If a trustee uses any part of the principal

in the continuance of a business of which the trustor was a sole proprietor or a partner, the net profits of the business, computed in accordance with recognized methods of accounting for a comparable business, are income. If a loss results in any fiscal or calendar year, the loss falls on principal and may not be carried into any other fiscal or calendar year for purposes of calculating net income.

(2) Recognized methods of accounting for a comparable business shall be used to determine income from an agricultural or farming operation, including the raising of animals or the operation of a nursery.

NEW SECTION. **Section 147.** Disposition of natural resources. (1) If any part of the principal consists of a right to receive royalties, overriding or limited royalties, working interests, production payments, net profit interests, or other interests in minerals or other natural resources in, on, or under land, the receipts from taking the natural resources from the land shall be allocated as follows:

(a) If received as rent on a lease or extension payments on a lease, the receipts are income.

(b) If received from a production payment, the receipts are income to the extent of any factor for interest or its equivalent provided in the governing instrument. There shall be allocated to principal the fraction of the

balance of the receipts which the unrecovered cost of the production payment bears to the balance owed on the production payment, exclusive of any factor for interest or its equivalent. The receipts not allocated to principal are income.

(c) If received as a royalty, overriding or limited royalty or bonus, or from a working, net profit, or any other interest in minerals or other natural resources, receipts not provided for in subsections (1)(a) and (1)(b) shall be apportioned on a yearly basis in accordance with this paragraph whether or not any natural resource was being taken from the land at the time the trust was established. The receipts shall be allocated entirely to income or apportioned between income and principal as the trustee in its discretion may determine, but the amount added to principal as an allowance for depletion may not exceed the lesser of:

(i) the percentage of gross receipts allowed as a deduction for depletion in computing taxable income for federal income tax purposes or

(ii) 50% of the net receipts remaining after payment of expenses, direct and indirect, computed without allowance for depletion.

(2) This section does not apply to timber, water, soil, sod, dirt, turf, or mosses.

NEW SECTION. **Section 148.** Timber. If any part of the principal consists of land from which merchantable timber may be removed, the receipts from taking the timber from the land shall be allocated in accordance with [section 140(1)(c)].

NEW SECTION. **Section 149.** Other property subject to depletion. Except as provided in [sections 147 and 148], if the principal consists of property subject to depletion, including leaseholds, patents, copyrights, royalty rights, and rights to receive payments on a contract for deferred compensation, receipts from the property, not in excess of 5% per year of its inventory value, are income, and the balance is principal.

NEW SECTION. **Section 150.** Charges against income and principal. (1) The following charges shall be made against income:

(a) ordinary expenses incurred in connection with the administration, management, or preservation of the trust property, including:

(i) regularly recurring taxes assessed against any portion of the principal;

(ii) water rates;

(iii) premiums on insurance taken upon the interests of the income beneficiary, remainder beneficiary, or trustee;

(iv) interest paid by the trustee; and

(v) ordinary repairs;

(b) a reasonable allowance for depreciation on property subject to depreciation under generally accepted accounting principles, but no allowance may be made for depreciation on that portion of any real property used by a beneficiary as a residence or for depreciation of any property held by the trustee on July 1, 1983, for which the trustee was not then making an allowance for depreciation;

(c) not less than one-half of court costs, attorney fees, and other fees on periodic judicial accounting, unless the court directs otherwise;

(d) court costs, attorney fees, and fees on other accountings or judicial proceedings if the matter primarily concerns the income interest, unless the court directs otherwise;

(e) not less than one-half of the trustee's regular compensation, whether based on a percentage of principal or income, and all expenses reasonably incurred for current management of principal and application of income, unless the court directs otherwise; and

(f) any tax levied upon receipts defined as income under [sections 138 through 150] or the trust instrument and payable by the trustee.

(2) If charges against income are of unusual amount, the trustee may, by means of reserves or other reasonable

means, charge them over a reasonable period of time and withhold from distribution sufficient sums to regularize distributions.

(3) (a) The following charges shall be made against principal:

(i) trustee's compensation not chargeable to income under subsections (1)(d) and (1)(e);

(ii) special compensation of trustees;

(iii) expenses reasonably incurred in connection with principal, court costs, and attorney fees primarily concerning matters of principal; and

(iv) trustee's compensation computed on principal as an acceptance, distribution, or termination fee;

(b) charges not provided for in subsection (1), including:

(i) the costs of investing and reinvesting principal;

(ii) the payments on principal of an indebtedness, including a mortgage amortized by periodic payments of principal;

(iii) expenses for preparation of property for rental or sale; and

(iv) unless the court directs otherwise, expenses incurred in maintaining or defending any action to construe the trust or protect it or the property or assure the title of any trust property;

(c) extraordinary repairs or expenses incurred in making a capital improvement to principal, including special assessments, but a trustee may establish an allowance for deprecation out of income to the extent permitted by subsection (1)(b) and by [section 146];

(d) any tax levied upon profit, gain, or other receipts allocated to principal, notwithstanding denomination of the tax as an income tax by the taxing authority; and

(e) if an estate or inheritance tax is levied in respect to a trust in which both an income beneficiary and a remainder beneficiary have an interest, any amount apportioned to the trust, including interest and penalties, even though the income beneficiary also has rights in the principal.

(4) Regularly recurring charges payable from income shall be apportioned to the same extent and in the same manner that income is apportioned under [section 142].

NEW SECTION. **Section 151.** Breach of trust. A violation by the trustee of any duty that the trustee owes the beneficiary is a breach of trust.

NEW SECTION. **Section 152.** Trustee's liability to beneficiary for acts of agent. (1) Except as provided in subsection (2), the trustee is not liable to the beneficiary for the acts or omissions of an agent.

(2) The trustee is liable to the beneficiary for an act or omission of an agent employed by the trustee in the administration of the trust that would be a breach of the trust if committed by the trustee under any of the following circumstances:

(a) whenever the trustee has the power to direct the act of the agent;

(b) whenever the trustee delegates to the agent the authority to perform an act that the trustee is under a duty not to delegate;

(c) whenever the trustee does not use reasonable care in the selection of the agent or the retention of the agent selected by the trustee;

(d) whenever the trustee does not exercise proper supervision over the agent's conduct in a case where the trustee has the power to supervise the agent;

(e) whenever the trustee conceals the act of the agent; or

(f) whenever the trustee neglects to take reasonable steps to compel the agent to redress the wrong in a case where the trustee knows of the agent's acts or omissions.

(3) The liability of a trustee for acts or omissions of agents that occurred before October 1, 1989, is governed by prior law and not by this section.

NEW SECTION. **Section 153.** Trustee's liability to

beneficiary for acts of cotrustee. (1) Except as provided in subsection (2), a trustee is not liable to the beneficiary for a breach of trust committed by a cotrustee.

(2) A trustee is liable to the beneficiary for a breach committed by a cotrustee under any of the following circumstances:

(a) whenever the trustee participates in a breach of trust committed by the cotrustee;

(b) whenever the trustee improperly delegates the administration of the trust to the cotrustee;

(c) whenever the trustee approves, knowingly acquiesces in, or conceals a breach of trust committed by the cotrustee;

(d) whenever the trustee negligently enables the cotrustee to commit a breach of trust; or

(e) whenever the trustee neglects to take reasonable steps to compel the cotrustee to redress a breach of trust in a case where the trustee knows or has information from which the trustee reasonably should have known of the breach.

(3) The liability of a trustee for acts or omissions of a cotrustee that occurred before October 1, 1989, is governed by prior law and not by this section.

NEW SECTION. **Section 154.** Trustee's liability to beneficiary for acts of predecessor. (1) Except as provided

in subsection (2), a successor trustee is not liable to the beneficiary for a breach of trust committed by a predecessor trustee.

(2) A successor trustee is liable to the beneficiary for breach of trust involving acts or omissions of a predecessor trustee in any of the following circumstances:

(a) whenever the successor trustee knows or has information from which the successor trustee reasonably should have known of a situation constituting a breach of trust committed by the predecessor trustee, and the successor trustee improperly permits it to continue;

(b) whenever the successor trustee neglects to take reasonable steps to compel the predecessor trustee to deliver the trust property to the successor trustee; or

(c) whenever the successor trustee neglects to take reasonable steps to redress a breach of trust committed by the predecessor trustee in a case where the successor trustee knows or has information from which the successor trustee should have known of the predecessor trustee's breach.

(3) The liability of a trustee for acts or omissions of a predecessor trustee that occurred before October 1, 1989, is governed by prior law and not by this section.

NEW SECTION. **Section 155.** Remedies for breach of trust. (1) If a trustee commits a breach of trust, or

threatens to commit a breach of trust, a beneficiary or cotrustee of the trust may commence a proceeding for any of the following purposes that is appropriate:

(a) to compel the trustee to perform the trustee's duties;

(b) to enjoin the trustee from committing a breach of trust;

(c) to compel the trustee to redress a breach of trust by payment of money or otherwise;

(d) to appoint a receiver or temporary trustee to take possession of the trust property and administer the trust;

(e) to remove the trustee;

(f) subject to [section 210], to set aside acts of the trustee;

(g) to reduce or deny compensation of the trustee;

(h) subject to [section 210], to impose an equitable lien or a constructive trust on trust property; or

(i) subject to [section 210], to trace trust property that has been wrongfully disposed of and recover the property or its proceeds.

(2) The provision of remedies for breach of trust in subsection (1) does not prevent resort to any other appropriate remedy provided by statute or the common law.

NEW SECTION. **Section 156.** Remedies for breach exclusively in equity. The remedies of a beneficiary against

the trustee are exclusively in equity.

NEW SECTION. **Section 157.** **Measure of liability for breach of trust.** (1) If the trustee commits a breach of trust, the trustee is chargeable with any of the following that is appropriate under the circumstances:

(a) any loss or depreciation in value of the trust estate resulting from the breach of trust, with interest;

(b) any profit made by the trustee through the breach of trust, with interest; or

(c) any profit that would have accrued to the trust estate if the loss of profit is the result of the breach of trust.

(2) If the trustee has acted reasonably under the circumstances as known to the trustee, the court, in its discretion, may excuse the trustee in whole or in part from liability under subsection (1) if it would be equitable to do so.

NEW SECTION. **Section 158.** **Measure of liability for interest.** If the trustee is liable for interest pursuant to [section 157], the trustee is liable for the greater of the following amounts:

(1) the amount of interest that accrues at the legal rate on judgments; or

(2) the amount of interest actually received.

NEW SECTION. **Section 159.** **Limitations on proceedings**

against trustee. (1) Unless a claim is previously barred by adjudication, consent, limitation, or otherwise:

(a) If a beneficiary has received an interim or final account in writing, or other written report, that adequately discloses the existence of a claim against the trustee for breach of trust, the claim is barred as to that beneficiary unless a proceeding to assert the claim is commenced within 3 years after receipt of the account or report. An account or report adequately discloses existence of a claim if it provides sufficient information so that the beneficiary knows of the claim or reasonably should have inquired into the existence of the claim.

(b) If an interim or final account or other report does not adequately disclose the existence of a claim against the trustee for breach of trust, the claim is barred as to that beneficiary unless a proceeding to assert the claim is commenced within 3 years after the beneficiary discovered, or reasonably should have discovered, the existence of the claim.

(2) For the purpose of subsection (1), a beneficiary is considered to have received an account or report, as follows:

(a) in the case of an adult who is reasonably capable of understanding the account or report, if it is received by the adult personally;

(b) in the case of an adult who is not reasonably capable of understanding the account or report, if it is received by the person's legal representative, including a guardian ad litem or other person appointed for this purpose; or

(c) in the case of a minor, if it is received by the minor's guardian or, if the minor does not have a guardian, if it is received by the minor's parent so long as the parent does not have a conflict of interest.

(3) The limitations period applicable to actions by a beneficiary against a trustee on a claim that arose before October 1, 1989, is governed by this section, except that a claim arising before October 1, 1989, is not barred by this section until October 1, 1990.

NEW SECTION. **Section 160.** Exculpation of trustee. (1) Except as provided in subsection (2), the trustee can be relieved of liability for breach of trust by provisions in the trust instrument.

(2) A provision in the trust instrument is not effective to relieve the trustee of liability:

(a) for breach of trust committed intentionally, with gross negligence, or with reckless indifference to the interest of the beneficiary; or

(b) for any profit that the trustee derives from a breach of trust.

NEW SECTION. **Section 161.** Nonliability for following instructions under revocable trust. (1) Notwithstanding [section 160], a trustee of a revocable trust is not liable to a beneficiary for any act performed or omitted pursuant to written directions from the person holding the power to revoke, including a person to whom the power to direct the trustee is delegated.

(2) Subsection (1) applies to a trust that is revocable in part with respect to the interest of the beneficiary in that part of the trust property.

NEW SECTION. **Section 162.** Consent of beneficiary to relieve trustee of liability for breach of trust. (1) Except as provided in subsections (2) and (3), a beneficiary may not hold the trustee liable for an act or omission of the trustee as a breach of trust if the beneficiary consented to the act or omission before or at the time of the act or omission.

(2) The consent of the beneficiary does not preclude the beneficiary from holding the trustee liable for a breach of trust in any of the following circumstances:

(a) whenever the beneficiary was under an incapacity at the time of the consent or of the act or omission;

(b) whenever the beneficiary at the time consent was given did not know of his rights and of the material facts that the trustee knew or should have known and that the

trustee did not reasonably believe that the beneficiary knew; or

(c) whenever the consent of the beneficiary was induced by improper conduct of the trustee.

(3) Whenever the trustee has an interest in the transaction adverse to the interest of the beneficiary, the consent of the beneficiary does not preclude the beneficiary from holding the trustee liable for a breach of trust under any of the circumstances described in subsection (2) or whenever the transaction to which the beneficiary consented was not fair and reasonable to the beneficiary.

NEW SECTION. **Section 163. Discharge of trustee's liability by release or contract.** (1) Except as provided in subsection (2), a beneficiary may be precluded from holding the trustee liable for a breach of trust by the beneficiary's release or contract effective to discharge the trustee's liability to the beneficiary for that breach.

(2) A release or contract is not effective to discharge the trustee's liability for a breach of trust in any of the following circumstances:

(a) whenever the beneficiary was under an incapacity at the time of making the release or contract;

(b) whenever the beneficiary did not know of his rights and of the material facts:

(i) that the trustee knew or reasonably should have

known; and

(ii) that the trustee did not reasonably believe that the beneficiary knew;

(c) whenever the release or contract of the beneficiary was induced by improper conduct of the trustee; or

(d) whenever the transaction involved a bargain with the trustee that was not fair and reasonable.

NEW SECTION. **Section 164. Discharge of trustee's liability by subsequent affirmance.** (1) Except as provided in subsection (2), if the trustee, in breach of trust, enters into a transaction that the beneficiary may at his option reject or affirm, and the beneficiary affirms the transaction, the beneficiary may not thereafter reject it and hold the trustee liable for any loss occurring after the trustee entered into the transaction.

(2) The affirmance of a transaction by the beneficiary does not preclude the beneficiary from holding a trustee liable for a breach of trust if, at the time of the affirmance, any of the following circumstances existed:

(a) the beneficiary was under an incapacity;

(b) the beneficiary did not know of his rights and of the material facts:

(i) that the trustee knew or reasonably should have known; and

(ii) that the trustee did not reasonably believe that the beneficiary knew;

(c) the affirmance was induced by improper conduct of the trustee; or

(d) the transaction involved a bargain with the trustee that was not fair and reasonable.

NEW SECTION. **Section 165.** Subject matter jurisdiction. (1) The district court having jurisdiction over the trust pursuant to [sections 1 through 215] has exclusive jurisdiction of proceedings concerning the internal affairs of trusts.

(2) The district court having jurisdiction over the trust pursuant to [sections 1 through 215] has concurrent jurisdiction of the following:

(a) actions and proceedings to determine the existence of trusts;

(b) actions and proceedings by or against creditors or debtors of trusts; and

(c) other actions and proceedings involving trustees and third persons.

NEW SECTION. **Section 166.** Full-power court. In proceedings concerning the internal affairs of trusts commenced pursuant to [sections 1 through 215], the court has all the powers of a district court exercising its general jurisdiction.

NEW SECTION. **Section 167.** Principal place of administration of trust. (1) The principal place of administration of the trust is the usual place where the day-to-day activity of the trust is carried on by the trustee or its representative who is primarily responsible for the administration of the trust.

(2) If the principal place of administration of the trust cannot be determined under subsection (1), it shall be determined as follows:

(a) if the trust has a single trustee, the principal place of administration of the trust is the trustee's residence or usual place of business; or

(b) if the trust has more than one trustee, the principal place of administration of the trust is the residence or usual place of business of any of the cotrustees as agreed upon by them. If not agreed upon by the cotrustees, the principal place of administration of the trust is the residence or usual place of business of any of the cotrustees.

NEW SECTION. **Section 168.** Jurisdiction over trustees and beneficiaries. Subject to [section 169]:

(1) by accepting the trusteeship of a trust having its principal place of administration in this state the trustee submits personally to the jurisdiction of the court under [sections 1 through 215]; and

(2) to the extent of their interests in the trust, all beneficiaries of a trust having its principal place of administration in this state are subject to the jurisdiction of the court under [sections 1 through 215].

NEW SECTION. **Section 169.** Basis of jurisdiction over trust, trust property, and trust parties. The court may exercise jurisdiction in proceedings under this division on any basis permitted by Rule 4 of the Rules of Civil Procedure.

NEW SECTION. **Section 170.** Venue. (1) The proper county for commencement of a proceeding pursuant to [sections 165 through 178] is either of the following:

(a) in the case of a living trust, the county where the principal place of administration of the trust is located; or

(b) in the case of a testamentary trust, either the county where the decedent's estate is administered or where the principal place of administration of the trust is located.

(2) If a living trust has no trustee, the proper county for commencement of a proceeding for appointing a trustee is the county where the trust property, or some portion of the trust property, is located.

(3) Except as otherwise provided in subsections (1) and (2), the proper county for commencement of a proceeding

pursuant to [sections 1 through 215] is determined by the rules applicable to civil actions generally.

NEW SECTION. **Section 171.** Jury trial. There is no right to a jury trial in proceedings under [sections 1 through 215] concerning the internal affairs of trusts.

NEW SECTION. **Section 172.** Application of part. This part applies to notice in proceedings commenced pursuant to [sections 1 through 215] or notice otherwise required or permitted by [sections 1 through 215].

NEW SECTION. **Section 173.** Manner of mailing -- when mailing complete. (1) If a notice or other paper is required or permitted to be mailed, it shall be sent by first-class mail.

(2) Mailing is complete when the notice or other paper is deposited in the mail, postage prepaid, addressed to the person to whom it is mailed.

NEW SECTION. **Section 174.** Personal delivery instead of mailing. If a notice or other paper is required or permitted to be mailed, it may be delivered personally to the person to whom it is required or permitted to be mailed.

NEW SECTION. **Section 175.** Proof of giving notice -- conclusiveness of order. (1) Proof of the giving of notice shall be made at or before the hearing to the satisfaction of the court.

(2) If it appears to the satisfaction of the court

that notice has been regularly given or that the party entitled to notice has waived, the court shall so find in its order. When the order becomes final, it is conclusive on all persons, whether or not in being.

NEW SECTION. **Section 176.** Additional notice. (1) The court may, on its own motion or on motion of a trustee or other person interested in the trust, require that further or additional notice be given at any state of the proceeding. The court may prescribe the form and method of the notice to be given.

(2) A petitioner or other person required to give notice may cause notice to be given to any person interested in the trust without the need for a court order.

NEW SECTION. **Section 177.** Shortening time. The court may for good cause shorten the time for giving a notice.

NEW SECTION. **Section 178.** Notice of postponed hearings. The court may continue or postpone any hearing, from time to time, in the interest of justice, and no further notice of the continued or postponed hearing is required unless otherwise ordered by the court.

NEW SECTION. **Section 179.** Petitioners -- grounds for petition. (1) Except as provided in [section 68], a trustee or beneficiary of a trust may petition the court under [sections 165 through 203] concerning the internal affairs of the trust or to determine the existence of the trust.

(2) Proceedings concerning the internal affairs of a trust include, but are not limited to, proceedings for any of the following purposes:

(a) determining questions of construction of a trust instrument;

(b) determining the existence or nonexistence of any immunity, power, privilege, duty, or right;

(c) determining the validity of a trust provision;

(d) ascertaining beneficiaries and determining to whom property shall pass or be delivered upon final or partial termination of the trust, to the extent the determination is not made by the trust instrument;

(e) settling the accounts and passing upon the acts of the trustee, including the exercise of discretionary powers;

(f) instructing the trustee;

(g) compelling the trustee to report information about the trust or account to the beneficiary, if:

(i) the trustee has failed to submit a requested report or account within 60 days after written request of the beneficiary; and

(ii) no report or account has been made within 6 months preceding the request;

(h) granting powers to the trustee;

(i) fixing or allowing payment of the trustee's compensation;

(j) appointing or removing a trustee;

(k) accepting the resignation of a trustee;

(l) compelling redress of a breach of the trust by any available remedy;

(m) approving or directing the modification or termination of the trust;

(n) approving or directing the combination or division of trusts;

(o) amending or conforming the trust instrument in the manner required to qualify a decedent's estate for the charitable estate tax deduction under federal law, including the addition of mandatory governing instrument requirements for a charitable remainder trust as required by final regulations and rulings of the United States internal revenue service, in any case in which all parties interested in the trust have submitted written agreement to the proposed changes or written disclaimer of interest;

(p) authorizing or directing transfer of a trust or trust property to or from another jurisdiction;

(q) directing transfer of a testamentary trust subject to continuing court jurisdiction from one county to another;

(r) approving removal of a testamentary trust from continuing court jurisdiction; or

(s) reforming or excusing compliance with the governing instrument of an organization pursuant to [section

104].

NEW SECTION. **Section 180. Commencement of proceeding.** (1) A proceeding under [sections 165 through 203] is commenced by filing a verified petition stating facts showing that the petition is authorized under this chapter and the grounds of the petition.

(2) When a petition that requires a hearing is filed with the court clerk, the clerk shall set the matter for hearing.

NEW SECTION. **Section 181. Dismissal of petition.** The court may dismiss a petition if it appears that the proceeding is not reasonably necessary for the protection of the interests of the trustee or beneficiary.

NEW SECTION. **Section 182. Notice.** At least 14 days before the time set for the hearing on the petition, the petitioner shall cause notice of the time and place of hearing to be mailed to any of the following persons who are not petitioners:

(1) all trustees;

(2) all beneficiaries who are entitled to notice; and

(3) the attorney general, if the petition is related to a charitable trust subject to the jurisdiction of the attorney general, unless the attorney general waives notice.

NEW SECTION. **Section 183. Request for special notice.** (1) If proceedings involving a trust are pending, a

beneficiary of the trust may, in person or by attorney, serve on the trustee or the trustee's attorney and file with the court clerk where the proceedings are pending a written request stating that the beneficiary desires special notice of the filing of petitions in the proceeding relating to any or all of the purposes described in [section 179] and giving an address for receiving notice by mail. Proof of service of the request on the trustee shall be filed with the court clerk when the request is filed.

(2) Except as provided in subsection (3), after serving and filing a request and proof of service pursuant to subsection (1), the beneficiary is entitled to notice pursuant to [section 182].

(3) A request for special notice made by a beneficiary whose right to notice is restricted by [section 70] is not effective.

NEW SECTION. **Section 184. Request for copy of petition.** If a trustee or beneficiary has served and filed either a notice of appearance, in person or by counsel, directed to the petitioner or the petitioner's counsel in connection with a particular petition and proceeding or a written request for a copy of the petition, and has given an address to which notice or a copy of the petition may be mailed or delivered, the petitioner shall cause a copy of the petition to be mailed to that person within 5 days after

service of the notice of appearance or receipt of the request.

NEW SECTION. **Section 185. Authority to make necessary orders -- temporary trustee.** The court in its discretion may make any orders and take any other action necessary or proper to dispose of the matters presented by the petition, including appointment of a temporary trustee to administer the trust in whole or in part.

NEW SECTION. **Section 186. Appeal.** An appeal may be taken from the grant or denial of any final order made under [sections 165 through 203], except the following:

(1) compelling the trustee to submit an account or report acts as trustee to a beneficiary pursuant to [section 179(2)(g)];

(2) accepting the resignation of a trustee pursuant to [section 179(2)(k)]; or

(3) approving removal of a testamentary trust from continuing court jurisdiction pursuant to [section 179(2)(r)].

NEW SECTION. **Section 187. Appointment of guardian ad litem.** (1) The court may, on its own motion or on request of a trustee or other person interested in the trust, appoint a guardian ad litem at any stage of a proceeding concerning the trust to represent the interest of any of the following persons, if the court determines that representation of the

interest otherwise would be inadequate:

(a) a minor;

(b) an incapacitated person;

(c) an unborn person;

(d) an unascertained person;

(e) a person whose identity or address is unknown; or

(f) a designated class of persons who are not ascertained or are not in being.

(2) If not precluded by a conflict of interest, a guardian ad litem may be appointed to represent several persons or interests.

(3) The reasonable expenses of the guardian ad litem, including compensation and attorney's fees, shall be determined by the court and paid as the court orders, either out of trust property or by the petitioner.

(4) If no guardian ad litem is appointed, an unborn person or an unascertained person is bound by an order to the extent his or her interest is adequately represented by another party having a substantially identical interest in the proceeding.

NEW SECTION. **Section 188.** **Intermittent judicial intervention in trust administration.** The administration of trusts is intended to proceed expeditiously and free of judicial intervention, subject to the jurisdiction of the court.

NEW SECTION. **Section 189.** **Enforcement of beneficiary's rights under charitable trust by attorney general.** In a case involving a charitable trust subject to the jurisdiction of the attorney general, the attorney general may petition under [sections 165 through 203].

NEW SECTION. **Section 190.** **Application of part.** (1) [Sections 190 through 195] apply to all of the following:

(a) a trust that is subject to [sections 1 through 215]; and

(b) any other trust to which the provisions of [sections 165 through 203] are made applicable by statute or trust instrument.

(2) [Sections 190 through 195] do not prevent the transfer of the place of administration of a trust or of trust property to another jurisdiction by any other available means.

NEW SECTION. **Section 191.** **Transfer of place of administration or property from Montana.** (1) The court may make an order for the transfer of the place of administration of a trust or the transfer of some or all of the trust property to a jurisdiction outside this state as provided in [sections 165 through 203].

(2) Except as otherwise provided in [sections 190 through 195], proceedings under [sections 165 through 203] are governed by [sections 190 through 195].

NEW SECTION. **Section 192.** Contents of petition. The petition for transfer shall set forth all of the following:

(1) the names and places of residence of the following:

(a) the trustee administering the trust in this state; and

(b) the trustee, including any domiciliary trustee, who will administer the trust or trust property in the other jurisdiction;

(2) the names, ages, and places of residence of the living beneficiaries, as far as known to the petitioner;

(3) whether the trustee who will administer the trust in the other jurisdiction has agreed to accept the trust. If so, the acceptance or a copy shall be attached as an exhibit to the petition or otherwise filed with the court;

(4) a general statement of the qualifications of the trustee who will administer the trust in the other jurisdiction and the amount of fiduciary bond, if any. If the trustee is an individual, the statement shall include the trustee's age;

(5) a general statement of the nature and value of the property of any trust of the same trustor being administered in the other jurisdiction by the trustee who will administer the trust in the other jurisdiction;

(6) the name of the court, if any, having jurisdiction

of the trustee in the other jurisdiction or of its accounts or in which a proceeding may be had with respect to administration of the trust or the trustee's accounts;

(7) a statement of the character, condition, location, and value of the trust property sought to be transferred;

(8) whether there is any pending civil action in this state against the trustee arising out of the administration of the trust sought to be transferred; and

(9) a statement of the reasons for the transfer.

NEW SECTION. **Section 193.** Notice and hearing. (1) At least 14 days before the time set for the hearing on the petition, the petitioner shall cause notice of the time and place of the hearing to be mailed to each of the persons named in the petition at their respective addresses as stated in the petition.

(2) Any person interested in the trust, as trustee, beneficiary, or otherwise, may appear and file written grounds in opposition to the petition.

NEW SECTION. **Section 194.** Order granting transfer. The court may, in its discretion, grant the petition and order the trustee to transfer the trust property or to transfer the place of administration of the trust to the other jurisdiction if, after hearing, all of the following appear to the court:

(1) the transfer of the trust property to a trustee in

another jurisdiction, or the transfer of the place of administration of the trust to another jurisdiction, will promote the best interests of the trust and those interested in it, taking into account the interest in the economical and convenient administration of the trust;

(2) the transfer will not violate the trust instrument; and

(3) any new trustee to whom the trust property is to be transferred is qualified, willing, and able to administer the trust or trust property under the trust instrument.

NEW SECTION. **Section 195. Manner of transfer -- discharge of trustee.** If a transfer is ordered under this chapter, the court may direct the manner of transfer and impose terms and conditions as may be just, including, but not limited to, a requirement for the substitution of a successor trustee in any pending litigation in this state. The delivery of property in accordance with the order of the court is a discharge of the trustee in relation to all property embraced in the order.

NEW SECTION. **Section 196.** Application. (1) [Sections 196 through 203] apply to a trust, or portion thereof, administered in a jurisdiction outside this state.

(2) [Sections 196 through 203] do not prevent the transfer of the place of administration of a trust or trust property to this state by any other available means.

NEW SECTION. **Section 197. Transfer of place of administration or property to Montana.** (1) The court may make an order accepting the transfer of the place of administration of a trust from another jurisdiction to this state or the transfer of some or all of the trust property in another jurisdiction to a trustee in this state as provided in [sections 196 through 203].

(2) Except as otherwise provided in [sections 196 through 203], proceedings under [sections 196 through 203] are governed by this chapter.

NEW SECTION. **Section 198. Venue.** (1) If the petition requests that a resident of this state be appointed trustee, the petition shall be filed in the court of the county where the proposed principal place of administration of the trust pursuant to [section 167] is located.

(2) If the petition requests that only a nonresident of this state be appointed trustee, the petition shall be filed in the court of the county where either:

(a) any beneficiary resides; or

(b) a substantial portion of the trust property to be transferred is located or will be located.

NEW SECTION. **Section 199. Contents of petition.** The petition for transfer shall set forth all of the following:

(1) the names and places of residence of the following:

(a) the trustee administering the trust in the other jurisdiction; and

(b) the proposed trustee to whom administration of the trust or trust property will be transferred;

(2) the names, ages, and places of residence of all living beneficiaries, as far as known to the petitioner;

(3) whether administration of the trust has been subject to supervision in a jurisdiction outside this state. If so, the petition shall state whether a petition or appropriate request for transfer of place of administration of the trust or trust property to this state has been filed, if necessary, with the court in the other jurisdiction, and the status of the petition or request.

(4) whether the trustee proposed to administer the trust in this state has agreed to accept the trust in this state. If the trustee has agreed, the acceptance shall be attached as an exhibit to the petition or otherwise filed with the court.

(5) a general statement of the qualifications of the trustee proposed to administer the trust in this state and the amount of any bond to be requested. If the trustee is an individual, the statement shall include the trustee's age.

(6) a copy of the trust instrument or a statement of the terms of the trust instrument in effect at the time the petition is filed, including all amendments thereto;

(7) a statement of the character, condition, location, and value of the trust property sought to be transferred; and

(8) a statement of the reasons for the transfer.

NEW SECTION. **Section 200.** Notice and hearing. (1) At least 14 days before the time set for the hearing on the petition, the petitioner shall cause notice of the time and place of the hearing to be mailed to each of the persons named in the petition at their respective addresses as stated in the petition.

(2) Any person interested in the trust, as trustee, beneficiary, or otherwise, may appear and file written grounds in opposition to the petition.

NEW SECTION. **Section 201.** Order accepting transfer and appointing trustee. (1) The court may, in its discretion, grant the petition and issue an order accepting transfer of trust property or the place of administration of the trust to this state and appoint a trustee to administer the trust in this state, if, after hearing, all of the following appear to the court:

(a) the transfer of the trust property to a trustee in this state, or the transfer of the place of administration of the trust to this state, will promote the best interests of the trust and those interested in it, taking into account the interest in the economical and convenient administration

of the trust;

(b) the transfer will not violate the trust instrument;

(c) the trustee appointed by the court to administer the trust in this state, and to whom the trust property is to be transferred, is qualified, willing, and able to administer the trust or trust property under the trust instrument; and

(d) the proper court in the other jurisdiction has approved the transfer if approval is necessary under the law of the other jurisdiction.

(2) If the court grants the petition under subsection (1), the court shall require the trustee to give a bond, if necessary under the law of the other jurisdiction or of this state, and may require bond as provided in [section 49].

NEW SECTION. **Section 202.** Conditional order accepting transfer. If appropriate to facilitate transfer of the trust property or the place of administration of a trust to this state, the court may issue a conditional order appointing a trustee to administer the trust in this state and indicating that transfer to this state will be accepted if transfer is approved by the proper court of the other jurisdiction.

NEW SECTION. **Section 203.** Administration of transferred trust. A trust transferred to this state pursuant to [sections 165 through 203] shall be administered

in the same manner as a trust of that type created in this state.

NEW SECTION. **Section 204.** Personal liability of trustee to third persons on contracts. (1) Unless otherwise provided in the contract or in [sections 165 through 203], a trustee is not personally liable on a contract properly entered into in the trustee's fiduciary capacity in the course of administration of the trust unless the trustee fails to reveal the trustee's representative capacity or identify the trust in the contract.

(2) The personal liability of a trustee on a contract entered into before October 1, 1989, is governed by prior law and not by this section.

NEW SECTION. **Section 205.** Personal liability of trustee arising from ownership or control of trust estate. A trustee is personally liable for obligations arising from ownership or control of trust property only if the trustee is personally at fault.

NEW SECTION. **Section 206.** Personal liability of trustee for torts. A trustee is personally liable for torts committed in the course of administration of the trust only if the trustee is personally at fault.

NEW SECTION. **Section 207.** Liability of dissenting cotrustee to third persons. (1) A cotrustee who does not join in exercising a power held by three or more cotrustees

is not liable to third persons for the consequences of the exercise of the power.

(2) A dissenting cotrustee who joins in an action at the direction of the majority cotrustees is not liable to third persons for the action if the dissenting cotrustee expresses the dissent in writing to any other cotrustee at or before the time the action is taken.

(3) This section does not excuse a cotrustee from liability for failure to discharge the cotrustee's duties as a trustee.

NEW SECTION. **Section 208.** **Assertion of claims against trust.** A claim based on a contract entered into by a trustee in the trustee's representative capacity, on an obligation arising from ownership or control of trust property, or on a tort committed in the course of administration of the trust may be asserted against the trust by proceeding against the trustee in the trustee's representative capacity, whether or not the trustee is personally liable on the claim.

NEW SECTION. **Section 209.** **Liability as between trustee and trust estate.** The question of liability as between the trust estate and the trustee personally may be determined in a proceeding under [section 179].

NEW SECTION. **Section 210.** **Protection of third person dealing with trustee.** With respect to a third person dealing with a trustee or assisting a trustee in the conduct of a

transaction, if the third person acts for a valuable consideration and without actual knowledge that the trustee is exceeding the trustee's powers or improperly exercising them:

(1) the third person is not bound to inquire whether the trustee has power to act or is properly exercising a power and may assume without inquiry the existence of a trust power and its proper exercise; and

(2) the third person is fully protected in dealing with or assisting the trustee just as if the trustee has and is properly exercising the power the trustee purports to exercise.

NEW SECTION. **Section 211.** **Application of property delivered to trustee by third person.** A third person is not bound to ensure the proper application of trust property paid or delivered to the trustee.

NEW SECTION. **Section 212.** **Protection of third person dealing with former trustee.** If a third person acting for a valuable consideration enters into a transaction with a former trustee without knowledge that the person is no longer a trustee, the third person is fully protected just as if the former trustee were still a trustee.

NEW SECTION. **Section 213.** **Effects on real property transactions.** (1) This section relates only to conveyances of real property to or from a trust, and supplements, but

does not modify other substantive provisions of [sections 1 through 215] relating to the creation or validity of trusts. This section does not affect conveyances recorded prior to October 1, 1989.

(2) Except as otherwise provided in [sections 1 through 215], a conveyance of real property to a trustee designated as such in the conveyance vests the whole estate conveyed in the trustee, subject only to the trustee's duties. The beneficiaries of the trust take no estate or interest in the real property, but may determine or enforce the terms of the trust as provided in [sections 1 through 215].

(3) An instrument creating or amending a trust need not be recorded, but may be if properly acknowledged.

(4) If there is no clear reference to or designation of a grantee as trustee in a conveyance (nor in a separately recorded instrument recorded in the same county as the conveyance and describing the same property as described in the conveyance), the conveyance shall be considered to be absolute to the grantee, in favor of purchasers or encumbrancers from the grantee, who were without actual knowledge and who acted for a valuable consideration, despite any valid trust which may exist.

(5) Unless limitations upon a trustee's power or authority are set forth in the recorded conveyance of real

property to the trustee or in a separate trust instrument (or portion thereof, or abstract thereof) recorded in the same county, there are no limitations upon the trustee's power or authority to convey or encumber the real property in favor of third persons who were without actual knowledge and who acted for a valuable consideration. A separate trust instrument incorporated by reference in a conveyance to a trustee cannot limit the trustee's power or authority to convey or encumber unless the limitations are set forth in the trust instrument (or portion thereof or abstract thereof) which is also recorded in the county where the real property is located. An amendment to a recorded trust instrument may not affect the power or authority of a trustee to convey or encumber unless it is also recorded in the same place.

(6) A subsequent conveyance from a person designated in the original conveyance as trustee (or from his successor trustee) conveys the whole estate vested in the trustee, except as limited by the terms of the conveyance. The identity of any successor trustee may be established by a recorded affidavit of the successor trustee specifying his name and address and the date and circumstances of his succession, and confirming that he is currently lawfully serving in such capacity.

(7) In an action or proceeding by a third person

involving the real property granted to a trustee, the person designated as trustee in the original conveyance, or the successor trustee as established in subsection (6), or, if none, the person then actually serving as trustee, or, if none, any beneficiary designated by the court to represent the interests of the beneficiaries, shall be considered the only necessary representative of the trust and of all persons with an interest therein. A judgment is binding upon and conclusive against the trust and all persons interested therein as to all matters finally adjudicated in the judgment.

NEW SECTION. **Section 214.** **Creditor's rights against revocable trust during trustor's lifetime.** If the trustor retains the power to revoke the trust in whole or in part, the trust property is subject to the claims of creditors of the trustor to the extent of the power of revocation during the lifetime of the trustor.

NEW SECTION. **Section 215.** **Creditor's rights against revocable trust after trustor's death.** Upon the death of a trustor who had retained the power to revoke the trust in whole or in part, the property that was subject to the power of revocation at the time of the trustor's death is subject to the claims of creditors of the decedent trustor's estate and to the expenses of administration of the estate to the extent that the decedent trustor's estate is inadequate to

satisfy those claims and expenses.

Section 216. Section 2-2-103, MCA, is amended to read:

"**2-2-103. Public trust.** (1) The holding of public office or employment is a public trust, created by the confidence which the electorate reposes in the integrity of public officers, legislators, and employees. A public officer, legislator, or employee shall carry out his duties for the benefit of the people of the state.

(2) A public officer, legislator, or employee whose conduct departs from his fiduciary duty is liable to the people of the state as a trustee of property, is liable to a beneficiary under ~~72-20-203(2)~~ [section 77], and shall suffer such other liabilities as a private fiduciary would suffer for abuse of his trust. The county attorney of the county where the trust is violated may bring appropriate judicial proceedings on behalf of the people. Any moneys collected in such actions shall be paid to the general fund of the aggrieved agency.

(3) The following sections set forth various rules of conduct, the transgression of any of which is, as such, a violation of fiduciary duty, and various ethical principles, the transgression of any of which is not, as such, a violation of fiduciary duty."

Section 217. Section 31-2-209, MCA, is amended to read:

"31-2-209. **Assignment -- when void.** An assignment for the benefit of creditors is void against any creditor of the assignor not assenting thereto in the following cases:

(1) if it gives a preference dependent upon any condition or contingency or with any power of revocation reserved;

(2) if it tends to coerce any creditor to release or compromise his demand;

(3) if it provides for the payment of any claim known by the assignor to be false or fraudulent or for the payment of more upon any claim than is known to be justly due from the assignor;

(4) if it reserves any interest in the assigned property or in any part thereof to the assignor or for his benefit, before all existing debts are paid;

(5) if it confers upon the assignee any power which, if exercised, might prevent or delay the immediate conversion of the assigned property to the purposes of the trust;

(6) if it exempts him from liability for neglect of duty or misconduct;

(7) if it violates ~~72-20-203(1)~~ [section 77]."

Section 218. Section 70-20-101, MCA, is amended to read:

"70-20-101. **Transfer to be in writing -- statute of**

frauds. No estate or interest in real property, other than an estate at will or for a term not exceeding 1 year~~, or any trust or over or power concerning it or in any manner relating thereto~~ can be created, granted, assigned, surrendered, or declared otherwise than by operation of law or a conveyance or other instrument in writing, subscribed by the party creating, granting, assigning, surrendering, or declaring it or by his lawful agent thereunto authorized by writing."

Section 219. Section 82-1-304, MCA, is amended to read:

"82-1-304. **Administration of the trust.** (1) The administration of the trust shall comply with the appropriate provisions regulating trusts contained in Title 72.

(2) No trustee or attorney fees may be paid from the trust proceeds.

(3) All bonuses, rental payments, royalties, and other income shall be paid to the trustee until the trust is terminated and notice of its termination given to all interested parties. The trustee shall distribute all money held in the trust to the person or persons entitled to it upon the order of the district court.

(4) A trust in favor of unlocatable owners shall be in force until the unlocatable owners of the mineral interest in question have successfully claimed the share of funds

held in trust and filed the notice provided in 82-1-306.

(5) The trustee shall invest funds under his management in the manner of a prudent man, as ~~defined in 72-21-104~~ provided in [section 89]. Fifty percent of the interest earned on each trust shall be credited to the general fund of the county in which the mineral interest is located to defray the costs of administration.

(6) Funds held in the trusts are subject to the provisions governing abandoned property contained in Title 70, chapter 9."

NEW SECTION. **Section 220.** Repealer. Sections 72-12-101 through 72-12-103, Title 72, chapters 20 through 25, sections 72-27-101 and 72-27-102, MCA, are repealed.

NEW SECTION. **Section 221.** Codification instruction. [Sections 1 through 215] are intended to be codified as an integral part of Title 72 and the provisions of Title 72 apply to [sections 1 through 215].

-End-

CHAIRMAN--BRUCE CRIPPEN
SECRETARY-ROSEMARY JACOBY COMMITTEE--(S) JUDICIARY OFFICE--ROOM 412
NORMAL SCHEDULE==> SITE: ROOM 325 DAYS: M,T,W,T,F TIME: 10:00 A.M.

NOTE: BILL WILL BE LISTED TWICE IF REREFERRED BACK TO THE SAME COMMITTEE

BILL	REFER DATE	LATEST DATE/ACTION ON BILL	
	SPONSOR: MAZUREK, JOE	TITLE-MALICIOUS INTIMIDATION OR HARASSMENT OF PERSONS BECAUSE OF RACE, RELIGION	
SB 307	02/01	03/28--(H) SPECIAL ACTION	MOTION FAILED TO TAKE FROM COMMITTEE
	SPONSOR: HOFMAN, SAM	TITLE-PROHIBIT OBSCENITY DISSEMINATION/EXHIBITION TO PERSON OF ANY AGE	
SB 312	02/01	03/07--(H) TABLED IN COMMITTEE (H) JUDICIARY	
	SPONSOR: PINSONEAULT, DICK	TITLE-REVISE ACCESS TO COURTS--CONSTITUTIONAL AMENDMENT	
SB 314	02/03	04/14--(S) CHAPTER NUMBER	EFFECTIVE DATE: 04/14/89
	SPONSOR: REGAN, PAT	TITLE-PROHIBIT DISCRIMINATION BY PRIVATE CLUBS	
SB 322	02/02	04/14--(S) CHAPTER NUMBER	EFFECTIVE DATE: 10/01/89
	SPONSOR: VAN VALKENBURG, FRED	TITLE-REVISE THE MEDIA CONFIDENTIALITY ACT	
SB 324	02/02	03/20--(S) CHAPTER NUMBER	EFFECTIVE DATE: 10/01/89
	SPONSOR: BECK, TOM	TITLE-PROBATION DISCHARGE BEFORE EXPIRATION	
SB 329	02/02	04/24--INFORMALLY TABLED	
	SPONSOR: CRIPPEN, BRUCE	TITLE-REVISE EMINENT DOMAIN	
SB 331	02/03	04/20--(S) CHAPTER NUMBER	EFFECTIVE DATE: 10/01/89
	SPONSOR: BISHOP, AL	TITLE-BILL TO REVISE GENERALLY THE UNIFORM PROBATE CODE AND RELATED LAW	
SB 333	02/03	04/19--(H) SIGNED BY SPEAKER	
	SPONSOR: MAZUREK, JOE	TITLE-AN ACT TO GENERALLY REVISE THE LAWS RELATING TO TRUSTS AND TRUSTEES	
SB 338	02/04	04/14--(S) CHAPTER NUMBER	EFFECTIVE DATE: 10/01/89
	SPONSOR: MAZUREK, JOE	TITLE-COUNTY VICTIM RESTITUTION FUND--HANDLING FEE FOR RESTITUTION PAYMENT	
SB 342	02/04	04/18--(S) CHAPTER NUMBER	EFFECTIVE DATE: 10/01/89
	SPONSOR: HOFMAN, SAM	TITLE-PROHIBIT DISPLAY AND DISSEMINATION OF MATERIAL HARMFUL TO MINORS	
SB 344	02/04	02/13--(S) ADVERSE COM RPT ADOPTED (S) JUDICIARY	
	SPONSOR: HARP, JOHN	TITLE-GOV'S APPOINTEES TO JUDICIAL NOMINATION COMMISSION TO SERVE AT HIS PLEASURE	
SB 347	02/04	03/20--(H) TABLED IN COMMITTEE (H) JUDICIARY	
	SPONSOR: VAN VALKENBURG, FRED	TITLE-REVISE CRIMINAL PROCEDURE	
SB 353 R	02/06	04/05--(S) CHAPTER NUMBER	EFFECTIVE DATE: 07/01/89
	SPONSOR: CRIPPEN, BRUCE	TITLE-TACTICAL INCIDENT ASSISTANCE	
SB 358	02/06	02/15--(S) 2ND READ INDEFINITE POSTPONED	
	SPONSOR: WILLIAMS, BOB	TITLE-UNSUCCESSFUL BIDDER STANDING TO CHALLENGE AWARD	
SB 363	02/07	04/21--(S) CHAPTER NUMBER	EFFECTIVE DATE: 10/01/89
	SPONSOR: CRIPPEN, BRUCE	TITLE-REMOVE DOLLAR LIMIT ON ARBITRATION OF PROPERTY CONTRACTS	
SB 367	02/07	03/27--(H) CHAPTER NUMBER	EFFECTIVE DATE: 10/01/89
	SPONSOR: NOBLE, JERRY	TITLE-EVIDENCE DISPOSITION (CRIMINAL)	
SB 369	02/08	03/09--(H) TABLED IN COMMITTEE (H) BUSINESS & LABOR	
	SPONSOR: BROWN, ROBERT	TITLE-REPEALING LAWS AUTHORIZING CALCUTTA POOLS	
SB 373	02/13	04/24--(S) DIED IN COMMITTEE	
	SPONSOR: PINSONEAULT, DICK	TITLE-BLOOD AND URINE TESTING AS A CONDITION OF EMPLOYMENT	

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bruce Crippen, on February 10, 1989, at 10:00 a.m.

ROLL CALL

Members Present: Chairman Bruce Crippen, V. Chairman Al Bishop, Senators Tom Beck, Bob Brown, John Harp, Mike Halligan, Loren Jenkins, Joe Mazurek, R. J. Pinsoneault and Bill Yellowtail

Members Excused: None

Members Absent: None

Staff Present: Staff Attorney Valencia Lane and Committee Secretary Rosemary Jacoby

Announcements/Discussion: There were none.

HEARING ON SENATE BILL 358

Presentation and Opening Statement by Sponsor: Senator Bob Williams of Hobson, District 15, opened the hearing. He said the bill was an act granting an unsuccessful bidder on a public contract the right to challenge the award in district court. If the court finds that the contract was not let to the lowest bidder whose bid was within the established specifications, the court shall invalidate that award to begin the bidding process again, he said. He reviewed the bill.

List of Testifying Proponents and What Group they Represent:

John Christianson, Attorney from Stanford
H. S. Hansen, Montana Technical Council

List of Testifying Opponents and What Group They Represent:

None

HEARING ON SENATE BILL 333

Presentation and Opening Statement by Sponsor: Senator Joe Mazurek of Helena, District 23, opened the hearing which is a general revision of the trust laws in Montana, he said. He said the bill was similar to the one presented by Senator Van Valkenburg to the committee regarding criminal procedure. The State Bar of Montana Tax and Probate Section had worked for two years on the antiquated code to bring it up to date and make it more consistent. The Tax and Probate Section has approved all the changes recommended by the subcommittee. He said the law had been drafted by the Law School under the direction of Ed Eck, who has excellent credentials for doing so.

List of Testifying Proponents and What Group they Represent:

Ed Eck, UM Law School Professor
Walter Murfitt, Helena Attorney
Dan McLane, Billings Attorney
Howard Vralstead, Montana Bankers Association, Trust Dept.
Jim Johnson Kalispell Attorney
Kathleen Magone, UM Research Assistant, UM Law School, herself

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Ed Eck presented written testimony to the committee. (See Exhibit 1.)

Walter Murfitt said that most of his practice was devoted to working with the trust code. He said that some of the antiquated codes have been expensive for some of his clients. He felt this bill would be good for the clients, lawyers and administrators of trusts. He heartily endorsed the bill.

Dan McLane said he was currently the chairman of the Tax and Probate Section, so he inherited the project after it had been ongoing for about 3 years. The bill had been reviewed by many lawyers in the state and, while it may not be a

perfect bill, he thought it was a very good one. He urged favorable consideration.

Howard Vralstead said his group, comprised of virtually all the trust officers in the state, wholeheartedly endorsed the bill.

Jim Johnson said he had worked on the committee which studied the bill for 3 years. It is not just a compendium of other states statutes, but was gone over thoroughly by trust officers in the banking industry and by lawyers on both sides. He said the bill was largely from the California code, but also included statute from other states. He said the bill was drawn up from proposals that were considered to be the best for the state.

Kathleen Magone said she was a third year law student who had worked on the project for the past year and a half. She heartily endorsed the legislation.

Questions From Committee Members: Senator Halligan asked about trusts drawn up by "fly-by-night" companies. How would this law address that issue, he asked. Mr. Eck said there had been a company in Missoula selling trusts without the benefit of any professional assistance. The bill does not address that specifically, he said, but does have a unique provision. If the trust instrument does not have a clause indicating that it's revocable, then it's irrevocable. This bill reverses that, to avoid the trap of the unwary who may not know what he or she is doing.

Jim Johnson said that Kalispell had experienced the same situation. People who are unauthorized and not expert in the field are giving advice in the area of trusts. He knew that there was an effort by the State Bar to address the issue, but didn't think this kind of legislation could do that.

Senator Pinsoneault asked Senator Mazurek about the bill he had proposed about trusts. Senator Mazurek said it was being worked on and that he had spoken to Mr. Eck about the bill. That bill, said Senator Mazurek, may be tabled in the House.

Closing by Sponsor: Senator Mazurek thanked the people who appeared in the hearing. He said this sort of revision had taken a great deal of time by experts in the field.

For that reason, he felt the bill should be accepted by the committee.

DISPOSITION OF SENATE BILL 333

Discussion: Valencia Lane said there was an amendment correcting some typographical errors.

Amendments and Votes: Senator Mazurek MOVED to amend the bill as suggested by the Law School (Exhibit 2). The MOTION CARRIED UNANIMOUSLY.

Recommendation and Vote: Senator MAZUREK MOVED that Senate Bill 333 DO PASS AS AMENDED. The MOTION CARRIED UNANIMOUSLY.

HEARING ON SENATE BILL 131

Presentation and Opening Statement by Sponsor: Senator Mazurek of Helena, District 23, said this bill was worked on by the same committee and was to generally revise the uniform statutory rule against perpetuities to overturn some of the inequities in the law for the unsuspecting.

List of Testifying Proponents and What Group they Represent:

Ed Eck, U. M. Law School Professor

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Ed Eck presented written testimony to the committee. (See Exhibit 3)

Questions From Committee Members: None

Closing by Sponsor: Senator Mazurek said he concurred with the amendments proposed by Ed Eck and closed the hearing.

ROLL CALL

JUDICIARY COMMITTEE

51st LEGISLATIVE SESSION -- 1989 Date 2-10-8

NAME	PRESENT	ABSENT	EXCUSED
SENATOR CRIPPEN	✓		
SENATOR BECK	✓		
SENATOR BISHOP	✓		
SENATOR BROWN	✓		
SENATOR HALLIGAN	✓		
SENATOR HARP	✓		
SENATOR JENKINS	✓		
SENATOR MAZUREK	✓		
SENATOR PINSONEAULT	✓		
SENATOR YELLOWTAIL	✓		

Attach to minutes.

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 2-10-89 Senate Bill No. 333 Time 11:29

NAME	YES	NO
SEN. BISHOP		
SEN. BECK		
SEN. BROWN		
SEN. HALLIGAN		
SEN. HARP		
SEN. JENKINS		
SEN. MAZUREK		
SEN PINSONEAULT		
SEN.YELLOWTAIL		
SEN. CRIPPEN		

Rosemary Jacoby
Secretary

Sen. Bruce Crippen
Chairman

Motion: Amend - Mazurek UNAN

DPA " UNAN

Ed Eck

DATE

BILL NO. SB 333

TRUST LAW REVISION BILL

Mr. Chairman and Senators, thank you for the opportunity to appear before you and speak in favor of Senate Bill No. 333. My name is Ed Eck, and I'm a professor at the University of Montana School of Law where I teach estate planning, federal estate and gift taxation, wills, trusts, and related courses.

Senate Bill No. 333 is the product of 3 years of work of a group of 12 Montana lawyers and 4 Montana trust officers of three trust companies which do business in Montana. I'would like to give recognition to those individuals who have actively participated in approximately 15 full-days meetings on the project, in addition to the research time they have spent on the project. Some of those members are present:

Harry Haines - Missoula ✓
George Goodrich - Missoula
Jim Johnson - Kalispell ✓
Howdy Murfitt - Helena ✓
Don Hamilton - Great Falls
Steve Potts - Great Falls ✓
Bob Drummond - Great Falls
Angus Fulton - Billings
Robert Michelotti - Billings
Pete Stanley - Billings
Stuart Lewin - Boulder

Additionally, and just as importantly, the trust officers who have been equally active members of the committee include:

Howard Vralsted - who co-chaired the committee with me

Jean Edwards

David Servies

Dave Haft

All of the trust officers are from Billings (except Jean Edwards who recently moved). This bill has been endorsed by the Montana Bankers Association. Additionally, it has been endorsed by the Tax Section of the Montana Bar Association. I am uncertain whether Jim Thompson who chairs the legislative activities of the Tax Section is here today. I believe that the overall chairman of the Tax & Probate Section, Dan McLean, is here today.

Most of the research on the bill has been conducted by me or students at the University of Montana School of Law. Over the past three years, over 10 students have been involved in the project in one ~~what~~ way or another. My current research assistant, Kathleen Magone, is here today as well. Funding for this student research has been provided by the State Bar Association, the Montana Bankers Association, and most fittingly the George and Laurine Harris Charitable Trust.

History of Project. As noted, this joint committee was formed in 1986 when Great Falls lawyer Greg Schwandt, then president of the Tax Section of the State Bar Association, saw a real need for trust law reform. I was appointed to chair the committee. For the first several months, law students compiled the statutes from a dozen states, the Uniform Probate, the Uniform Trust Acts and an variety of other sources. The result was a 350-page book where statutes from various states on the

same topic were placed side-by-side for ease the comparison.

Committee meetings began in earnest in 1987 where the merits of various statutes were debated and the results of my research and drafting was critically reviewed. The last of those meetings occurred in November of last year.

Content. I recognize that time does not permit a section-by-section analysis of such a comprehensive act. However, I would like to briefly list 5 reasons why this bill is superior to our existing trust provisions.

1. Elimination of inconsistencies. Our existing statues actually contain some inconsistent provisions. The history of Montana's trust statutes offers us an explanation. Most of these statutes were adopted in 1895, when we borrowed trust provisions from California. California had previously borrowed statutes from an 1872 New York trust code, known as the Field Code.

Since then, the legislature has wisely adopted from time to time various Uniform Acts which deals with specific aspects of trust law. For example, in 1974, the Uniform Trustee's powers act was adopted. This is a through piece of legislation which deals solely with the powers of trustees.

Unfortunately, when the Uniform Trustees Powers Act was adopted, no one apparently advised the Legislature that there were some inconsistent statutes on the books. One example is a New York code provision which requires that when there are 3 or more trustees of the same trust, all must agree on any action. However under the Uniform Trustee Powers Act, a majority can bind the trust.

This bill eliminates those inconsistencies. In fact, one of the most important provisions of this bill is its repealer provisions. This bill does not just add another layer of good law on top of existing law. Most all of the existing trust provisions are simply repealed.

2. The proposed trust code eliminates antiquated statutes. A number of existing Montana provisions simply are still in this 1872 New York state "English." Further, some of the provisions state a principle of law that most courts in other states have long since rejected. On the other hand, this bill attempts to eliminate both antiquated language and provisions of law.

3. The proposed code is better organized. Under this proposal, all of the statutes which deal with trusts are in one place, rather than scatted around various chapters of law.

4. The proposed code eliminates procedural dissimilarities. Under existing law, there are 14-day notice periods and 25-day notice periods and different rules for publishing notices in newspapers. The proposed Code simply sets a 14-day notice period on all proceedings concerning trusts.

5. The proposed Trust Code is comprehensive. Montana currently does not have any express provisions for the combination of similar trusts and for the division of a trust. Further, Montana does not have any provisions which deal with the termination of trusts with uneconomically low principal. Montana doesn't have provisions dealing with the transfer of trust situs into this state.

This proposed code deals with all of these issues and more.

To a great extent, this draft relies upon some 1986 comprehensive California legislation on these issues. However, committee members did not want to blindly follow another state. More than occasionally, a statute was borrowed from yet another state or from a current law review article on the topic.

Conclusion

In a nutshell, I think the people of Montana will benefit by the enactment of this bill. The bill will help people who wish to create trusts and people who are beneficiaries of trusts. If you have any specific questions about this bill, I and my colleges would be glad to entertain them. Obviously, this is a comprehensive bill. If we don't know the answer to a specific question, we'll be glad to get back to you in writing.

Questions?

Again, thank you for your consideration.

SENATE JUDICIARY
EXHIBIT NO. 1 part 2 PJ1
DATE 2-10-89
BILL NO. 333

Professor E. Edwin Eck
University of Montana
School of Law

Rationale in Support of S.B. 333

Montana adopted a large part of its trust statutes from California in 1895. These California statutes in turn represent an 1872 version of the Field Code from the state of New York. For the most part, the Montana legislature has not amended these statutes during the 94 years since their adoption.

Additionally, the legislature has adopted various uniform acts which form another body of law to be read in conjunction with the Field Code. While those acts (see, for example, the Montana Uniform Trustees' Powers Act and the Revised Uniform Principal and Income Act) are excellent, provisions which are inconsistent still exist in the Field Code. Other inconsistencies are replete within the current trust law.

Much of Montana trust law is antiquated, especially that from the Field Code. For the most part, this antiquity is a matter of terminology. The Field Code simply does not use twentieth century English. Further, occasionally a current Montana trust statute takes a position contrary to modern trust law.

A simple listing of the chapters of Title 72 Mont. Code Ann. provides the reader with a good clue that our existing statutes are disorganized. Chapter 20 is entitled "Trusts in General" and Chapter 31 is entitled "Miscellaneous Provisions Relating to Fiduciaries." Between those chapters are located most of the provisions relating to trust law. Also sandwiched between chapters 20 and 31 are chapters which simply are not components of trust law, including the Uniform Transfers to Minors Act, codified as chapter 26, and chapter 30, dealing with the management of institutional endowment funds.

The current Montana trust statutes have not taken advantage of the work of the first or second Restatement of Trusts or of other jurisdictions' statutes. The proposed trust code codifies most of the relevant rules relating to modern trusts, making the law more accessible and understandable to the courts, lawyers, and other interested persons.

Many of the Montana statutes relating to trust law include different procedural provisions that are unnecessarily dissimilar. The proposed code unifies procedural rules.

The draft is well-organized, simplified, and comprehensive, and should serve Montana well into the 21st century. It eliminates inconsistencies and antiquated terms, clarifies administration, and is specific yet succinct. We urge your support of S.B. 333.

SENATE JUDICIARY
EXHIBIT NO. 2-
DATE 2-10-89
BILL NO. SB 333

Passed

Amendments to Senate Bill No. 333
First Reading Copy (WHITE)

Requested by Law School
For the Committee on Judiciary

Prepared by Valencia Lane
February 9, 1989

1. Page 22, line 5.
Following: "circumstances"
Strike: "occur"
Insert: "occurs"

2. Page 57, line 18.
Following: "section"
Strike: "144"
Insert: "143"

3. Page 57, line 20.
Strike: "145"
Insert: "144"

4. Page 70, line 4.
Strike: "deprecation"
Insert: "depreciation"

DATE 2/10/89

COMMITTEE ON Judiciary BILL NO. 333

VISITOR'S REGISTER

NAME	REPRESENTING	Check One: Support	Oppose
[illegible]	State Bar	✓	
Kathleen Magone	self	✓	
Leonard Vraalstad	Mont. Bankers Assn - Trust Dir	✓	
Dave [illegible]	Mt. Bankers Assn, Trust Div	✓	
James W. Peterson	State Bar; Trust Code Comm	✓	
Steve T. Petty	" " / " " "	✓	
Henry H. Kuna	" " " " "	✓	
Britt A. Kunkel	" " " " "	✓	
Daniel N. McGarvey	State Bar Tax and Probate Council	✓	
[illegible]	self	✓	

(Please leave prepared statement with Secretary)

SENATE STANDING COMMITTEE REPORT

February 10, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration SB 333 (first reading copy -- white), respectfully report that SB 333 be amended and as so amended do pass:

1. Page 22, line 5.
Following: "circumstances"
Strike: "occur"
Insert: "occurs"

2. Page 57, line 18.
Following: "section"
Strike: "144"
Insert: "143"

3. Page 57, line 20.
Strike: "145"
Insert: "144"

4. Page 70, line 4.
Strike: "deprecation"
Insert: "depreciation"

AND AS AMENDED DO PASS

Signed: _____
Bruce D. Crippen, Chairman

2/10/89
2:45 p.m.

sc\sb333.210

Form CS-32
Rev. 1985

STATUS SHEET

51 LEGISLATIVE SESSION

JUDICIARY COMMITTEE

BILL NUMBER	ENTERED COM. DATE	DATE CONSIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CONCURRED IN DATE	BE NOT CONCURRED IN DATE	BE CONCURRED IN AMENDED DATE	BE NOT CONCURRED IN AS AMENDED DATE
SB 333	2-21	3-8	3-8					3-8			
SB 338	2-21	3-8	3-8					3-8			
SB 347	2-21	3-7	TABLED	ON 3-20							
SB 391	2-21	3-3	3-3					3-3			
SB 363	2-22	3-16	3-16							3-16	
SB 307	2-22	3-21	TABLED	ON 3-23							
SB 331	2-22	3-8	3-9							3-9	
SB 342	2-22										
SB 353	2-22	3-16	3-20					3-20			
SB 367	2-22	3-13	3-13					3-13			
SB 377	2-22	3-9	3-9							3-9	
SB 382	2-22	3-13	3-13					3-13			
SB 417	2-22	3-9	3-9					3-9			

Use a separate sheet for Senate Bills, House Bills, and Resolutions.

SENATE BILL NO. 333

INTRODUCED BY MAZUREK, CRIPPEN, BISHOP

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAWS RELATING TO TRUSTS AND TRUSTEES; AMENDING SECTIONS 2-2-103, 31-2-209, 70-20-101, AND 82-1-304, MCA; AND REPEALING SECTIONS 72-12-101 THROUGH 72-12-103, TITLE 72, CHAPTERS 20 THROUGH 25, AND SECTIONS 72-27-101 AND 72-27-102, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1.** Short title. [Sections 1 through 215] shall be known and may be cited as the "Trust Code".

NEW SECTION. **Section 2.** General rule concerning application of trust code. Except as otherwise provided by statute:

(1) After September 30, 1989, [sections 1 through 215] apply to all trusts regardless of when they were created, unless in the opinion of the court, application of a particular provision of [sections 1 through 215] would substantially interfere with the rights of the parties and other interested persons, in which case the particular provision of [sections 1 through 215] does not apply and prior law applies.

There is no change on SB 333 and will not be reprinted. Please refer to second reading (yellow) for complete text.

THIRD READING

APPROVED BY COMMITTEE
ON JUDICIARY

SENATE BILL NO. 333

INTRODUCED BY MAZUREK, CRIPPEN, BISHOP

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAWS RELATING TO TRUSTS AND TRUSTEES; AMENDING SECTIONS 2-2-103, 31-2-209, 70-20-101, AND 82-1-304, MCA; AND REPEALING SECTIONS 72-12-101 THROUGH 72-12-103, TITLE 72, CHAPTERS 20 THROUGH 25, AND SECTIONS 72-27-101 AND 72-27-102, MCA."

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(2) After September 30, 1989, [sections 1 through 215] apply to all proceedings concerning trusts whenever commenced, unless in the opinion of the court, application of a particular provision of [sections 1 through 215] would substantially interfere with the effective conduct of the proceedings or the rights of the parties and other interested persons, in which case the particular provision of [sections 1 through 215] does not apply and prior law applies.

NEW SECTION. **Section 3.** Common law as law of state. Except to the extent that the common law rules governing trusts are modified by statute, the common law as to trusts is the law of this state.

NEW SECTION. **Section 4.** Constructive and resulting trusts not affected. Other than [sections 19 through 23], nothing in [sections 1 through 215] affects the law relating to constructive or resulting trusts.

NEW SECTION. **Section 5.** Application of code to charitable trusts. Unless otherwise provided by statute, [sections 1 through 215] apply to charitable trusts that are subject to the jurisdiction of the attorney general.

NEW SECTION. **Section 6.** Laws affecting construction and operation of wills apply to trusts. (1) Title 72, chapter 2, part 5 and 72-3-901 apply to the construction and operation of trusts, except as provided in subsection (2).

SECOND READING

(2) This section does not apply to any trust if its terms expressly or by necessary implication make this section inapplicable to it.

(3) For purposes of [sections 1 through 215], references in Title 72, chapter 2, part 5 and in 72-3-901 to a "testator" refer to the trustor, references to a "will" refer to a trust, references to a "devisee" refer to a trust beneficiary, and references to a "devise" refer to a trust distribution.

NEW SECTION. **Section 7. Definitions.** As used in [sections 1 through 215] unless the context requires otherwise the following definitions apply:

(1) "Beneficiary" means a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer and, as it relates to a charitable trust, includes any person entitled to enforce the trust.

(2) "Person" means an individual, a corporation, an organization, or other legal entity.

(3) "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.

(4) "Trust" when not qualified by the word "resulting" or "constructive", includes any express trust, private or charitable, with additions thereto, wherever and however

created. It also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. The term does not include conservatorships, personal representatives, custodial arrangements pursuant to chapter 26 of this title, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind and any arrangement under which a person is nominee or escrowee for another.

(5) "Trustee" means the person holding property in trust. The term includes an original, additional, or successor trustee, whether or not appointed or confirmed by a court.

(6) "Trustor" means the person who creates a trust.

(7) "Trust company" means an entity which has qualified to engage in and conduct a trust business in this state.

(8) "Trust property" means the property held in trust.

NEW SECTION. **Section 8. Reference to statutes -- amendments and additions.** Whenever a reference is made to any portion of [sections 1 through 215] or to any other law, the reference applies to all amendments and additions made.

NEW SECTION. **Section 9.** **Methods of creating trust.** Subject to other provisions of [sections 1 through 72], a trust may be created by any of the following methods:

(1) a declaration by the owner of property that the owner holds the property as trustee;

(2) a transfer of property by the owner during the owner's lifetime to another person as trustee;

(3) a testamentary transfer of property by the owner to another person as trustee;

(4) an exercise of a power of appointment to another person as trustee; or

(5) an enforceable promise to create a trust.

NEW SECTION. **Section 10.** **Intention to create trust.** A trust is created only if the trustor properly manifests an intention to create a trust.

NEW SECTION. **Section 11.** **Trust property.** (1) A trust is created only if there is trust property.

(2) The requirement of subsection (1) may be satisfied if the trust (or its trustee) is designated to be beneficiary of the proceeds of an insurance contract, an annuity contract, an employee benefit plan, an individual retirement account, or similar device, even though the designation may be revoked.

NEW SECTION. **Section 12.** **Trust purpose.** A trust may be created for any purpose that is not illegal or against

public policy.

NEW SECTION. **Section 13.** **Trust for indefinite or general purposes.** A trust created for an indefinite or general purpose is not invalid for that reason if it can be determined with reasonable certainty that a particular use of the trust property comes within that purpose.

NEW SECTION. **Section 14.** **Designation of beneficiary.** (1) A trust, other than a charitable trust, is created only if there is a beneficiary.

(2) The requirement of subsection (1) is satisfied if the trust instrument provides for either of the following:

(a) a beneficiary or class of beneficiaries that is ascertainable with reasonable certainty or that is sufficiently described so it can be determined that some person meets the description or is within the class; or

(b) a grant of power to the trustee or some other person to select the beneficiaries based on a standard or in the discretion of the trustee or other person.

NEW SECTION. **Section 15.** **Designation of trust or trustee as beneficiary.** (1) A trust or trustee may be designated as the beneficiary of the proceeds of an insurance contract, an annuity contract, an employee benefit plan, an individual retirement account, or similar device if the designation is made in accordance with the contract, plan, account, or device.

(2) Subsection (1) applies even though the trust or trustee is named or to be named by will or trust and whether or not the will or trust is in existence at the time of the designation.

NEW SECTION. **Section 16.** Statute of frauds. A trust is not valid unless evidenced by one of the following methods:

(1) by a written instrument signed by the trustee, or by the trustee's agent if authorized in writing to do so;

(2) by a written instrument signed by the trustor, or by the trustor's agent if authorized in writing to do so; or

(3) by operation of law.

NEW SECTION. **Section 17.** Consideration. Consideration is not required to create a trust, but a promise to create a trust in the future is enforceable only if the requirements for an enforceable contract are satisfied.

NEW SECTION. **Section 18.** Exception to doctrine of merger. If a trust provides for one or more successor beneficiaries after the death of the trustor, the trust is not invalid, merged, or terminated in either of the following circumstances:

(1) where there is one trustor who is the sole trustee and the sole beneficiary during the trustor's lifetime; or

(2) where there are two or more trustors, one or more of whom are trustees, and the beneficial interest in the

trust is in one or more of the trustors during the lifetime of the trustors.

NEW SECTION. **Section 19.** Resulting trust upon failure of trust. Where the owner of property gratuitously transfers it and manifests in the trust instrument an intention that the transferee should hold the property in trust but the trust fails, the transferee holds the trust estate as a resulting trust for the transferor or his estate, unless:

(1) the transferor manifested in the trust instrument an intention that no resulting trust should arise; or

(2) the intended trust fails for illegality and the policy against unjust enrichment of the transferee is outweighed by the policy against giving relief to a person who has entered into an illegal transaction.

NEW SECTION. **Section 20.** Resulting trust upon full performance of trust. Where the owner of property gratuitously transfers it subject to a trust which is properly declared and which is fully performed without exhausting the trust estate, the trustee holds the surplus as a resulting trust for the transferor or his estate, unless the transferor manifested in the trust instrument an intention that no resulting trust of the surplus should arise.

NEW SECTION. **Section 21.** Purchase money resulting trust. (1) Where a transfer of property is made to one

person and the purchase price is paid by another, a resulting trust arises in favor of the person who paid the purchase price.

(2) Subsection (1) does not apply in any of the following circumstances:

(a) whenever the party paying the purchase price manifests an intention that no resulting trust should arise;

(b) whenever the transferee is a spouse, child, or other natural object of the bounty of the person who paid the purchase price; or

(c) whenever the transfer is made in order to accomplish an illegal purpose and the policy against unjust enrichment of the transferee is outweighed by the policy against giving relief to a person who has entered into an illegal transaction.

(3) Subsection (2)(b) does not apply if the party paying the purchase price manifested an intention that the transferee should not have the beneficial interest in the property.

NEW SECTION. **Section 22.** Constructive trust. A constructive trust arises when a person holding title to property is subject to an equitable duty to convey it to another on the ground that the person holding title would be unjustly enriched if he were permitted to retain it.

NEW SECTION. **Section 23.** Resulting trusts,

constructive trusts -- statute of frauds. Resulting trusts and constructive trusts are considered to arise by operation of law and are valid under [section 16(3)].

NEW SECTION. **Section 24.** Restraint on transfer of income. Except as provided in [section 28], if the trust instrument provides that a beneficiary's interest is not subject to voluntary or involuntary transfer, the beneficiary's interest in income under the trust may not be transferred and is not subject to enforcement of a money judgment until paid to the beneficiary.

NEW SECTION. **Section 25.** Restraint on transfer of principal. (1) Except as provided in subsection (2) and in [section 28], if the trust instrument provides that a beneficiary's interest in principal is not subject to voluntary or involuntary transfer, the beneficiary's interest in principal may not be transferred and is not subject to enforcement of a money judgment until paid to the beneficiary.

(2) After an amount of principal has become due and payable to the beneficiary under the trust instrument, upon petition to the court by a judgment creditor, the court may make an order directing the trustee to satisfy the money judgment out of that principal amount. The court in its discretion may issue an order directing the trustee to satisfy all or part of the judgment out of that principal

amount.

NEW SECTION. **Section 26.** **Trust for support.** Except as provided in [section 28], if the trust instrument provides that the trustee shall pay income or principal or both for the education or support of a beneficiary, the beneficiary's interest in income or principal or both under the trust may not be transferred and is not subject to the enforcement of a money judgment until paid to the beneficiary.

NEW SECTION. **Section 27.** **Transferee or creditor cannot compel trustee to exercise discretion -- liability of trustee for payment to or for beneficiary.** (1) If the trust instrument provides that the trustee shall pay to or for the benefit of a beneficiary so much of the income or principal or both as the trustee in the trustee's discretion sees fit to pay, a transferee or creditor of the beneficiary may not compel the trustee to pay any amount that may be paid only in the exercise of the trustee's discretion.

(2) If the trustee has knowledge of the transfer of the beneficiary's interest or has been served with process by a judgment creditor seeking to reach the beneficiary's interest, and the trustee pays to or for the benefit of the beneficiary any part of the income or principal that may be paid only in the exercise of the trustee's discretion, the trustee is liable to the transferee or creditor to the extent that the payment to or for the benefit of the

beneficiary impairs the right of the transferee or creditor. This subsection does not apply if the beneficiary's interest in the trust is subject to a restraint on transfer that is valid under [section 24 or 25].

(3) This section applies regardless of whether the trust instrument provides a standard for the exercise of the trustee's discretion.

(4) Nothing in this section limits any right the beneficiary may have to compel the trustee to pay to or for the benefit of the beneficiary all or part of the income or principal.

NEW SECTION. **Section 28.** **Where trustor is beneficiary.** (1) If the trustor is a beneficiary of a trust created by the trustor and the trustor's interest is subject to a provision restraining the voluntary or involuntary transfer of the trustor's interest, the restraint is invalid against transferees or creditors of the trustor. The invalidity of the restraint on transfer does not affect the validity of the trust.

(2) If the trustor is the beneficiary of a trust created by the trustor and the trust instrument provides that the trustee shall pay income or principal or both for the education or support of the beneficiary or gives the trustee the discretion to determine the amount of income or principal or both to be paid to or for the benefit of the

trustor, a transferee or creditor of the trustor may reach the maximum amount that the trustee could pay to or for the benefit of the trustor under the trust instrument, not exceeding the amount of the trustor's proportionate contribution to the trust.

NEW SECTION. **Section 29. Disclaimer not a transfer.** A disclaimer or renunciation by a beneficiary of all or part of his interest under a trust shall not be considered a transfer under [section 24 or 25].

NEW SECTION. **Section 30. Presumption of revocability.** Unless a trust is expressly made irrevocable by the trust instrument, the trust is revocable by the trustor. This section applies only where the trustor is domiciled in this state when the trust is created, where the trust instrument is executed in this state, or where the trust instrument provides that the law of this state governs the trust.

NEW SECTION. **Section 31. Method of revocation by trustor.** (1) A trust that is revocable by the trustor may be revoked in whole or in part by any of the following methods:

(a) by compliance with any method of revocation provided in the trust instrument; or

(b) by a writing (other than a will) signed by the trustor and delivered to the trustee during the lifetime of the trustor. If the trust instrument explicitly makes the method of revocation provided in the trust instrument the

exclusive method of revocation, the trust may not be revoked pursuant to this subsection.

(2) A trust may not be revoked by an attorney-in-fact under a power of attorney unless it is expressly permitted by the trust instrument.

(3) Nothing in this section limits the authority to modify or terminate a trust pursuant to [section 33 or 34] in an appropriate case.

(4) The manner of revocation of a trust revocable by the trustor that was created by an instrument executed before October 1, 1989, is governed by prior law and not by this section.

NEW SECTION. **Section 32. Power to revoke includes power to modify.** Unless the trust instrument provides otherwise, if a trust is revocable by the trustor, the trustor may modify the trust by the procedure for revocation.

NEW SECTION. **Section 33. Modification or termination of irrevocable trust by all beneficiaries.** (1) Except as provided in subsection (2), if all beneficiaries of an irrevocable trust consent, they may compel modification or termination of the trust upon petition to the court.

(2) If the continuance of the trust is necessary to carry out a material purpose of the trust, the trust cannot be modified or terminated unless the court, in its

discretion, determines that the reason for doing so under the circumstances outweighs the interest in accomplishing a material purpose of the trust. Under this section the court does not have discretion to permit termination of a trust that is subject to a valid restraint on transfer of the beneficiary's interest as provided in [sections 24 through 29].

NEW SECTION. **Section 34. Modification or termination by trustor and all beneficiaries.** (1) If the trustor and all beneficiaries of a trust consent, they may compel the modification or termination of the trust.

(2) If any beneficiary does not consent to the modification or termination of the trust, upon petition to the court, the other beneficiaries, with the consent of the trustor, may compel a modification or a partial termination of the trust if the interests of the beneficiaries who do not consent are not substantially impaired.

(3) If the trust provides for the disposition of principal to a class of persons described only as "heirs" or "next of kin" of the trustor, or using other words that describe the class of all persons who would take under the rules of intestacy, the court may limit the class of beneficiaries whose consent is needed to compel the modification or termination of the trust to the beneficiaries who are reasonably likely to take under the

circumstances.

NEW SECTION. **Section 35. Guardian ad litem.** For the purposes of [sections 33 and 34], the consent of a beneficiary who is legally incapacitated, unascertained, or unborn may be given in proceedings before the court by a guardian ad litem, if it would be appropriate to do so. In this case the guardian ad litem may rely on general family benefit accruing to living members of the beneficiary's family as a basis for approving a modification or termination of the trust.

NEW SECTION. **Section 36. No conclusive presumption of fertility.** In determining the class of beneficiaries whose consent is necessary to modify or terminate a trust pursuant to [section 33 or 34], the presumption of fertility is rebuttable.

NEW SECTION. **Section 37. Termination of trusts -- trustee's powers on termination.** (1) A trust terminates when any of the following occurs:

(a) the term of the trust expires;

(b) the trust purpose is fulfilled;

(c) the trust purpose becomes unlawful;

(d) the trust purpose becomes impossible to fulfill; or

(e) the trust is revoked.

(2) On termination of the trust, the trustee continues

to have the powers reasonably necessary under the circumstances to wind up the affairs of the trust.

NEW SECTION. **Section 38. Trust with uneconomically low principal.** (1) On petition by a trustee or beneficiary, if the court determines that the fair market value of the principal of a trust has become so low in relation to the cost of administration that continuation of the trust under its existing terms will defeat or substantially impair the accomplishment of its purposes, the court may, in its discretion and in a manner that conforms as nearly as possible to the intention of the trustor, order any of the following:

(a) termination of the trust;

(b) modification of the trust; or

(c) appointment of a new trustee.

(2) Notwithstanding subsection (1), if the trust principal does not exceed $20,000 in value, the trustee has the power to terminate the trust.

(3) The existence of a trust provision restraining transfer of the beneficiary's interest does not prevent application of this section.

NEW SECTION. **Section 39. Modification or termination.** (1) On petition by a trustee or beneficiary, the court may modify the administrative or dispositive provisions of the trust or terminate the trust if the continuation of the

trust under its terms would defeat or substantially impair the accomplishment of the purposes of the trust, whether by the imposition of tax, the allocation of beneficial interest inconsistent with such purposes, or by other reason. In this case, if necessary to carry out the purposes of the trust, the court may order the trustee to do acts that are not authorized or are forbidden by the trust instrument.

(2) The court shall consider a trust provision restraining transfer of the beneficiary's interest as a factor in making its decision whether to modify or terminate the trust, but the court is not precluded from exercising its discretion to modify or terminate the trust solely because of a restraint on transfer.

NEW SECTION. **Section 40. Disposition of property upon termination.** At the termination of a trust, the trust property shall be disposed of as follows:

(1) In the case of a trust that is revoked by the trustor, as directed by the trustor.

(2) In the case of a trust that is terminated by the consent of the trustor and all beneficiaries, as agreed by the trustor and all beneficiaries.

(3) In any other case, as provided in the trust instrument or in a manner directed by the court that conforms as nearly as possible to the intention of the trustor as expressed in the trust instrument. If a trust is

terminated by the trustee pursuant to [section 38(2)], the trust property shall be distributed as determined by the trustee pursuant to this subsection.

NEW SECTION. **Section 41. Combination of similar trusts.** If the terms of two or more trusts are substantially similar, on petition by a trustee or beneficiary, the court, for good cause shown, may combine the trusts if the court determines that administration as a single trust will not defeat or substantially impair the accomplishment of the trust purposes or the interests of the beneficiaries.

NEW SECTION. **Section 42. Division of trusts.** On petition by a trustee or beneficiary, the court, for good cause shown, may divide a trust into two or more separate trusts, if the court determines that dividing the trust will not defeat or substantially impair the accomplishment of the trust purposes or the interests of the beneficiaries.

NEW SECTION. **Section 43. Charitable trust.** A charitable trust, or the charitable portion of a trust, subjects the trustee to equitable duties to deal with the trust property for a charitable purpose.

NEW SECTION. **Section 44. Charitable purposes.** Charitable purposes include:

(1) the relief of poverty;

(2) the advancement of education;

(3) the advancement of religion;

(4) the promotion of health;

(5) governmental or municipal purposes; or

(6) other purposes the accomplishment of which are beneficial to the community.

NEW SECTION. **Section 45. Enforcement of a charitable trust.** The attorney general, a cotrustee, or a person who has a special interest in the enforcement of the charitable trust can maintain a suit for the enforcement of a charitable trust, but not persons who have no special interest or the trustor or his heirs or personal representative.

NEW SECTION. **Section 46. Cy pres doctrine.** If property is given in trust to be applied to a particular charitable purpose, and it is or becomes impossible, impracticable, or illegal to carry out the particular purpose, and if the trustor manifested a general intention to devote the property to charitable purposes, the trust need not fail. The court may direct the application of the property to some charitable purpose which falls within the general charitable intention of the trustor.

NEW SECTION. **Section 47. Acceptance of trust by trustee.** (1) The person named as trustee may accept the trust, or a modification of the trust, by one of the following methods:

(a) signing the trust instrument or the trust

instrument as modified, or signing a separate written acceptance; or

(b) knowingly exercising powers or performing duties under the trust instrument or the trust instrument as modified, except as provided in subsection (2).

(2) In a case where there is an immediate risk of damage to the trust property, the person named as trustee may act to preserve the trust property without accepting the trust or a modification of the trust, if within reasonable time after acting the person delivers a written rejection of the trust or the modification of the trust to the trustor or, if the trustor is dead or incompetent, to a beneficiary. This subsection does not impose a duty on the person named as trustee to act.

NEW SECTION. **Section 48.** **Rejection of trust -- nonliability of person who rejects trust.** (1) A person named as trustee may in writing reject the trust or a modification of the trust.

(2) If the person named as trustee does not accept the trust or a modification of the trust by a method provided in [section 47(1)] within a reasonable time after learning of being named as trustee or of the modification, the person has rejected the trust or the modification.

(3) A person named as trustee who rejects the trust or a modification of the trust is not liable with respect to

the rejected trust or modification.

NEW SECTION. **Section 49.** **Trustee's bond.** (1) A trustee is not required to give a bond to secure performance of the trustee's duties, unless either of the following circumstances ~~occur~~ OCCURS:

(a) A bond is required by the trust instrument.

(b) Notwithstanding a waiver of bond in the trust instrument, a bond is found by the court to be necessary to protect the interests of beneficiaries.

(2) Notwithstanding subsection (1)(a), the court may excuse a requirement of a bond, reduce or increase the amount of a bond, release a surety, permit the substitution of another bond with the same or different sureties, or accept another form of security.

(3) If a bond is required, it shall be filed or served, in the amount, and with sureties and liabilities as provided in the trust instrument or as ordered by the court.

(4) Except as otherwise provided in the trust instrument or ordered by the court, the cost of the bond shall be charged against the trust.

(5) A trust company may not be required to give a bond, notwithstanding a contrary provision in the trust instrument.

NEW SECTION. **Section 50.** **Certificate of trustee.** On application by the trustee, the clerk of the district court

shall issue a certificate that the trustee is a duly appointed and acting trustee under the trust if the court file shows the incumbency of the trustee.

NEW SECTION. **Section 51.** **Cotrustees.** (1) Unless otherwise provided in the trust instrument, a power vested in two trustees may only be exercised by their unanimous action.

(2) Unless otherwise provided in the trust instrument, a power vested in three or more trustees may be exercised by a majority of such trustees.

NEW SECTION. **Section 52.** **Vacancy in office of cotrustee.** Unless otherwise provided in the trust instrument, if a vacancy occurs in the office of a cotrustee, the remaining cotrustee or cotrustees may act for the trust as if they are the only trustees.

NEW SECTION. **Section 53.** **Temporary incapacity of cotrustee.** Unless otherwise provided in the trust instrument, if a cotrustee is unavailable to perform the duties of the cotrustee because of absence, illness, or other temporary incapacity, the remaining cotrustee or cotrustees may act for the trust when necessary to accomplish the purposes of the trust or to avoid irreparable injury to the trust property as if they are the only trustees.

NEW SECTION. **Section 54.** **Resignation of the trustee.**

(1) A trustee who has accepted the trust may resign only by one of the following methods:

(a) as provided in the trust instrument;

(b) in the case of a revocable trust, with the consent of the person holding the power to revoke the trust;

(c) in the case of a trust that is not revocable, with the consent of only all of the adult beneficiaries who are receiving or are entitled to receive income under the trust or to receive a distribution of principal if the trust were terminated at the time consent is sought; or

(d) pursuant to a court order obtained as provided in subsection (2).

(2) On petition by the trustee, the court shall accept the trustee's resignation. The court may also make any orders necessary for the preservation of the trust property, including the appointment of a receiver or a temporary trustee.

NEW SECTION. **Section 55.** **Liability upon resignation.** The liability for acts or omissions of a resigning trustee or of the sureties on the trustee's bond, if any, is not released or affected in any manner by the trustee's resignation.

NEW SECTION. **Section 56.** **Removal of a trustee.** (1) A trustee may be removed in accordance with the trust instrument or by the court on its own motion or on petition

of a cotrustee or beneficiary.

(2) The grounds for removal of a trustee by the court include the following:

(a) if the trustee has committed a breach of the trust;

(b) if the trustee is insolvent or otherwise unfit to administer the trust;

(c) if hostility or lack of cooperation among cotrustees impairs the administration of the trust;

(d) if the trustee fails or declines to act; or

(e) for other good cause.

(3) If it appears to the court that trust property or the interests of a beneficiary may suffer loss or injury pending a decision on a petition for removal of a trustee and any appellate review, the court may, on its own motion or on petition of a cotrustee or beneficiary, compel the trustee whose removal is sought to surrender trust property to a cotrustee or to a receiver or temporary trustee. The court may also suspend the powers of the trustee to the extent the court considers necessary.

NEW SECTION. **Section 57.** **Vacancy in office of trustee.** There is a vacancy in the office of trustee in any of the following circumstances:

(1) The person named as trustee rejects the trust.

(2) The person named as trustee cannot be identified

or does not exist.

(3) The trustee resigns or is removed.

(4) The trustee dies.

(5) A conservator or guardian of an individual trustee is appointed.

(6) A certificate of incorporation of a trust company is revoked or its powers are suspended, if the revocation or suspension is to be in effect for a period of 30 days or more.

(7) A receiver is appointed for a trust company if the appointment is not vacated within a period of 30 days.

NEW SECTION. **Section 58.** **Delivery of property by former trustee upon occurrence of vacancy.** When a vacancy has occurred in the office of trustee, the former trustee who holds property of the trust shall deliver the trust property to the successor trustee or a person appointed by the court to receive the property and remains responsible for the trust property until it is delivered. A trustee who has resigned or is removed has the powers reasonably necessary under the circumstances to preserve the trust property until it is delivered to the successor trustee and to perform actions necessary to complete the resigning or removed trustee's administration of the trust.

NEW SECTION. **Section 59.** **Appointment of trustee to fill vacancy.** (1) If the trust has no trustee or if the

trust instrument requires a vacancy in the office of a cotrustee to be filled, the vacancy shall be filled as provided in this section.

(2) If the trust instrument provides a practical method of appointing a trustee or names the person to fill the vacancy, the vacancy shall be filled as provided in the trust instrument.

(3) If the vacancy in the office of trustee is not filled as provided in subsection (2), on petition of a cotrustee or beneficiary the court may, in its discretion, appoint a trustee to fill the vacancy. If the trust provides for more than one trustee, the court may, in its discretion, appoint the original number or any lesser number of trustees. In selecting a trustee, the court shall give consideration to the wishes of the beneficiaries who are 14 years of age or older.

NEW SECTION. **Section 60. Capacity of trustee.** (1) The trustee must have the legal capacity to take, hold, and transfer the trust property. The trustee may be a natural person or a corporation or trust company. If the trustee is a corporation, it must be qualified to act as a trustee in this state.

(2) A beneficiary of a trust may be the trustee of the trust.

(3) The trustor of a trust may be the trustee of the

trust.

NEW SECTION. **Section 61. Trustee's compensation as provided in trust instrument -- different compensation.** (1) Subject to subsection (2), if the trust instrument provides for the trustee's compensation, the trustee is entitled to be compensated in accordance with the trust instrument.

(2) Upon proper showing, the court may fix or allow greater or lesser compensation than could be allowed under the terms of the trust in any of the following circumstances:

(a) whenever the duties of the trustee are substantially different from those contemplated when the trust was created;

(b) whenever the compensation in accordance with the terms of the trust would be inequitable or unreasonably low or high; or

(c) in extraordinary circumstances calling for equitable relief.

(3) An order fixing or allowing greater or lesser compensation under subsection (2) applies only prospectively to actions taken in administration of the trust after the order is made.

NEW SECTION. **Section 62. Trustee's compensation where trust silent.** If the trust instrument does not specify the trustee's compensation, the trustee is entitled to

reasonable compensation.

NEW SECTION. **Section 63. Compensation for services rendered in making temporary investments.** In addition to other compensation to which the trustee is entitled, the trustee is entitled to make a reasonable charge for services rendered in making temporary investments.

NEW SECTION. **Section 64. Court determination of prospective compensation.** The court may fix an amount of periodic compensation under [sections 61 and 62] to continue for as long as the court determines is proper.

NEW SECTION. **Section 65. Compensation of cotrustees.** Unless the trust instrument otherwise provides or the trustees otherwise agree, if the trust has two or more trustees, the compensation shall be apportioned among the cotrustees according to the services rendered by them.

NEW SECTION. **Section 66. Repayment of trustee for expenditures.** A trustee is entitled to the repayment out of the trust property for the following:

(1) expenditures that were properly incurred in the administration of the trust; and

(2) to the extent that they benefited the trust, expenditures that were not properly incurred in the administration of the trust.

NEW SECTION. **Section 67. Trustee's lien.** The trustee has an equitable lien on the trust property as against the

beneficiary in the amount of advances, with any interest, made for the protection of the trust, and for expenses, losses, and liabilities sustained in the administration of the trust or because of ownership or control of any trust property.

NEW SECTION. **Section 68. Limits on rights of beneficiary of revocable trust.** Except to the extent that the trust instrument otherwise provides or where the joint action of the trustor and all beneficiaries is required, during the time that a trust is revocable and the person holding the power to revoke the trust is competent:

(1) The person holding the power to revoke, and not the beneficiary, has the rights afforded beneficiaries under [sections 1 through 215].

(2) The duties of the trustee are owed to the person holding the power to revoke.

NEW SECTION. **Section 69. Consent by beneficiary of revocable trust.** (1) In any case where the consent of a beneficiary may be given or is required to be given before an action may be taken, during the time that a trust is revocable and the person holding the power to revoke the trust is competent, the person holding the power to revoke, and not the beneficiary, has the power to consent or withhold consent.

(2) This section does not apply where the joint

consent of the trustor and all beneficiaries is required by statute.

NEW SECTION. **Section 70. Notice to beneficiary of revocable trust.** Notwithstanding any other statute, during the time that a trust is revocable and the person holding the power to revoke the trust is competent, a notice that is to be given to a beneficiary shall be given to the person holding the power to revoke and not to the beneficiary.

NEW SECTION. **Section 71. Rights of holder of power of appointment or withdrawal.** The holder of a presently exercisable general power of appointment or power to withdraw property from the trust has the rights of a trustor provided by [sections 68 through 70], inclusive, to the extent of the holder's power over the trust property.

NEW SECTION. **Section 72. Notice in case involving future interest of beneficiary.** (1) Subject to subsections (2) and (3), it is sufficient compliance with a requirement in [sections 1 through 215] that notice be given to a beneficiary, or to a person interested in the trust, if notice is given as follows:

(a) Whenever an interest has been limited on any future contingency to persons who will compose a certain class upon the happening of a certain event without further limitation, notice shall be given to the persons in being who would constitute the class if the event had happened

immediately before the commencement of the proceedings.

(b) Whenever an interest has been limited to a living person and the same interest, or a share therein, has been further limited upon the happening of a future event to the surviving spouse or to persons who are or may be the distributees, heirs, issue, or other kindred of the living persons, notice shall be given to the living person.

(c) Whenever an interest has been limited upon the happening of any future event to a person, or a class of persons, or both, and the interest, or a share of the interest, has been further limited upon the happening of an additional future event to another person, or a class of persons, or both, notice shall be given to the person or persons in being who would take the interest upon the happening of the first of these events.

(2) If a conflict of interest involving the subject matter of the trust proceeding exists between a person to whom notice is required to be given and a person to whom notice is not otherwise required to be given under subsection (1), notice shall also be given to persons not otherwise entitled to notice under subsection (1) with respect to whom the conflict of interest exists.

(3) Nothing in this section affects any of the following:

(a) requirements for notice to:

(i) a person who has requested special notice;

(ii) a person who has filed notice of appearance; or

(iii) a particular person or entity required by statute to be given notice.

(b) Availability of a guardian ad litem pursuant to [section 187].

NEW SECTION. **Section 73.** **Duty to administer trust.** On acceptance of the trust, the trustee has a duty to administer the trust according to the trust instrument and, except to the extent the trust instrument provides otherwise, according to [sections 1 through 215].

NEW SECTION. **Section 74.** **Duties of trustee of revocable trust.** (1) Except as provided in subsection (2), the trustee of a revocable trust shall follow any written direction acceptable to the trustee given from time to time:

(a) by the person then having the power to revoke the trust or the part thereof with respect to which the direction is given; or

(b) by the person to whom the trustor delegates the right to direct the trustee.

(2) If a written direction given under subsection (1) would have the effect of modifying the trust, the trustee has no duty to follow the direction unless it complies with the requirements for modifying the trust.

NEW SECTION. **Section 75.** **Duty of loyalty.** (1) The

trustee has a duty to administer the trust solely in the interest of the beneficiaries.

(2) It is not a violation of the duty provided in subsection (1) for a trustee who administers two trusts to sell, exchange, or participate in the sale or exchange of trust property between the trusts, if both of the following requirements are met:

(a) the sale or exchange is fair and reasonable with respect to the beneficiaries of both trusts; and

(b) the trustee gives to the beneficiaries of both trusts notice of all material facts related to the sale or exchange that the trustee knows or should know.

NEW SECTION. **Section 76.** **Duty to deal impartially with beneficiaries.** If a trust has two or more beneficiaries, the trustee has a duty to deal impartially with them.

NEW SECTION. **Section 77.** **Duty to avoid conflict of interest.** (1) The trustee has a duty not to use or deal with trust property for the trustee's own profit or for any other purpose unconnected with the trust, nor to take part in any transaction in which the trustee has an interest adverse to the beneficiary.

(2) The trustee may not enforce any claim against the trust property that the trustee purchased after or in contemplation of appointment as trustee, but the court may

allow the trustee to be reimbursed from trust property the amount that the trustee paid for the claim.

(3) A transaction between the trustee and a beneficiary which occurs during the existence of the trust or while the trustee's influence with the beneficiary remains and by which the trustee obtains an advantage from the beneficiary is presumed to be a violation of the trustee's fiduciary duties. This presumption is a presumption affecting the burden of proof. This subsection does not apply to the provisions of an agreement between a trustee and a beneficiary relating to the hiring or compensation of the trustee.

NEW SECTION. **Section 78. Duty not to undertake adverse trust.** The trustee of one trust has a duty not to knowingly become a trustee of another trust adverse in its nature to the interest of the beneficiary of the first trust, and a duty to eliminate the conflict or resign as trustee when the conflict is discovered.

NEW SECTION. **Section 79. Duty to take control of and preserve trust property.** The trustee has a duty to take reasonable steps under the circumstances to take and keep control of and to preserve the trust property.

NEW SECTION. **Section 80. Duty to make trust property productive.** The trustee has a duty to make the trust property productive under the circumstances and in

furtherance of the purposes of the trust.

NEW SECTION. **Section 81. Duty to dispose of improper investments.** (1) Except as provided in subsection (2), the trustee has a duty within a reasonable time to dispose of any part of the trust property included in the trust at the time of its creation, or later acquired by or added to the trust, that would not be a proper investment for the trustee to make.

(2) Unless the trust instrument expressly provides otherwise, the trustee may, without liability, continue to hold property included in the trust at its creation or later added to the trust or acquired pursuant to proper authority, if retention is in the best interests of the trust or in furtherance of the purposes of the trust.

NEW SECTION. **Section 82. Duty to keep trust property separate and identified.** The trustee has a duty to do the following:

(1) to keep the trust property separate from other property not subject to the trust; and

(2) to see that the trust property is designated as property of the trust.

NEW SECTION. **Section 83. Duty to enforce claims.** The trustee has a duty to take reasonable steps to enforce claims that are part of the trust property.

NEW SECTION. **Section 84. Duty to defend actions.** The

trustee has a duty to take reasonable steps to defend actions that may result in a loss to the trust.

NEW SECTION. **Section 85.** Duty not to delegate. (1) The trustee has a duty not to delegate to others the performance of acts that the trustee can reasonably be required personally to perform and may not transfer the office of trustee to another person nor delegate the entire administration of the trust to a cotrustee or other person.

(2) In a case where a trustee has properly delegated a matter to an agent, cotrustee, or other person, the trustee has a duty to exercise general supervision over the person performing the delegated matter.

NEW SECTION. **Section 86.** Duty with respect to cotrustees. If a trust has more than one trustee, each trustee has a duty to do the following:

(1) to participate in the administration of the trust; and

(2) to take reasonable steps to prevent a cotrustee from committing a breach of trust or to compel a cotrustee to redress a breach of trust.

NEW SECTION. **Section 87.** Duty to use special skills. (1) The trustee has a duty to apply the full extent of the trustee's skills.

(2) If the trustor, in selecting the trustee, has relied on the trustee's representation of having special

skills, the trustee is held to the standard of the skills represented.

NEW SECTION. **Section 88.** Certain actions not violations of duties. The provision of services for compensation by a regulated financial institution or its affiliates in the ordinary course of business either to a trust of which it also acts as trustee or to a person dealing with the trust is not a violation of the duty provided in [section 75 or 77]. For the purposes of this section, "affiliate" means a corporation that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with another domestic or foreign corporation.

NEW SECTION. **Section 89.** Duty to use ordinary skill and prudence. (1) The trustee shall administer the trust with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person would use to accomplish the purposes of the trust as determined from the trust instrument.

(2) When investing, reinvesting, purchasing, acquiring, exchanging, selling, and managing trust property, the trustee shall act with the care, skill, prudence, and diligence under the circumstances then prevailing, including but not limited to the general economic conditions and the anticipated needs of the trust and its beneficiaries, that a

prudent person would use to accomplish the purposes of the trust as determined from the trust instrument. In the course of administering the trust pursuant to this standard, individual investments shall be considered as part of an overall investment strategy.

(3) The trustor may expand or restrict the standards provided in subsections (1) and (2) by express provisions in the trust instrument. A trustee is not liable to a beneficiary for the trustee's reliance on these express provisions.

NEW SECTION. **Section 90. Standard of care not affected by compensation.** A trustee's standard of care and performance in administering the trust is not affected by whether or not the trustee receives any compensation.

NEW SECTION. **Section 91. Interpretation of trust terms concerning legal investments.** If a trust created before, on, or after October 1, 1989, refers to "investments permissible by law for investment of trust funds", "authorized by law for investment of trust funds", "legal investments", "authorized investments", or "investments acquired using the judgment and care which men of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income, as well as the probable

safety of their capital", or uses other words of similar meaning in defining the powers of the trustee relative to investments, such language, in the absence of other controlling or modifying provisions of the trust instrument, shall be construed as imposing the standard of care provided by [section 89] and authorizing any investment permitted under [sections 105 through 137].

NEW SECTION. **Section 92. Trustee's general duty to report information to beneficiaries.** The trustee has a duty to keep the beneficiaries of the trust reasonably informed of the trust and its administration.

NEW SECTION. **Section 93. Duty to report information about trust on request.** Except as provided in [section 95], on reasonable request by a beneficiary, the trustee shall provide the beneficiary with a report of information about the assets, liabilities, receipts, and disbursements of the trust, the acts of the trustee, and the particulars relating to the administration of the trust relevant to the beneficiary's interest, including the terms of the trust that describe or affect the beneficiary's interest.

NEW SECTION. **Section 94. Duty to provide annual statement to income beneficiaries.** Except as provided in [section 95], the trustee shall annually mail each income beneficiary an itemized statement of all current receipts and disbursements of both principal and income.

NEW SECTION. **Section 95. Exceptions to duty to report information and to provide annual statement.** The trustee is not required to report information or to provide an annual statement to a beneficiary in any of the following circumstances:

(1) to the extent the trust instrument waives the report or annual statement;

(2) in the case of a beneficiary of a revocable trust, as provided in [section 68].

(3) as to a beneficiary who has waived in writing the right to a report or annual statement. A waiver of rights under this subsection may be withdrawn in writing at any time as to the most recent annual statement or future annual statements. A waiver has no effect of the beneficiary's right to petition for a report, statement, or account pursuant to [section 179]; or

(4) if the beneficiary and the trustee are the same person.

NEW SECTION. **Section 96. Permissive accounts.** At any time during the term of the trust or upon the termination of the trust, the trustee may mail an account to trust beneficiaries. To effectively bar a beneficiary from an action against the trustee pursuant to [section 159], the account must contain the following information:

(1) a statement of receipts and disbursements of

principal and income that have occurred since the last account;

(2) a statement of the assets and liabilities of the trust since the last account;

(3) the trustee's compensation since the last account;

(4) the agents hired by the trustee, their relationship to the trustee, if any, and their compensation since the last account;

(5) a statement that the recipient of the account may petition the court pursuant to [section 179] to obtain a court review of the account and of the acts of the trustee; and

(6) a statement that claims against the trustee for breach of trust may not be made after the expiration of 3 years from the date the beneficiary receives an account disclosing facts giving rise to the claim.

NEW SECTION. **Section 97. Discretionary powers to be exercised reasonably.** Except as provided in [section 98], a discretionary power conferred upon a trustee is not left to the trustee's arbitrary discretion, but shall be exercised reasonably.

NEW SECTION. **Section 98. Standard for exercise of "absolute", "sole", or "uncontrolled" powers.** (1) Subject to the additional requirements of subsection (2), if a trust instrument confers "absolute", "sole", or "uncontrolled"

discretion on a trustee, the trustee shall act in accordance with fiduciary principles and may not act in disregard of the purposes of the trust.

(2) Notwithstanding the trustor's use of terms like "absolute", "sole", or "uncontrolled", a person who is a beneficiary of a trust and who, either individually or as trustee or cotrustee, holds a power to take or distribute income or principal to or for the benefit of himself or herself pursuant to a standard, shall exercise that power reasonably and in accordance with the standard. In any case in which the standard governing the exercise of the power does not clearly indicate that a broader power is intended, the holder of the power may exercise it in his or her favor only for his or her health, education, support, or maintenance.

NEW SECTION. **Section 99. Definitions.** As used in [sections 99 through 104], the following definitions apply:

(1) "Charitable trust" means a charitable trust as described in section 4947(a)(1) of the Internal Revenue Code.

(2) "Private foundation" means a private foundation as defined in section 509 of the Internal Revenue Code.

(3) "Split-interest trust" means a split-interest trust as described in section 4947(a)(2) of the Internal Revenue Code.

NEW SECTION. **Section 100. Distribution under charitable trust or private foundation.** During any period when a trust is considered to be a charitable trust or a private foundation, the trustee shall distribute its income for each taxable year (and principal if necessary) at a time and in a manner that will not subject the property of the trust to tax under section 4942 of the Internal Revenue Code.

NEW SECTION. **Section 101. Restrictions on trustees under charitable trust, private foundations, or split-interest trust.** During any period when a trust is considered to be a charitable trust, a private foundation, or a split-interest trust, the trustee may not do any of the following:

(1) engage in any act of self-dealing as defined in section 4941(d) of the Internal Revenue Code;

(2) retain any excess business holdings as defined in section 4943(c) of the Internal Revenue Code;

(3) make any investments in such manner as to subject the property of the trust to tax under section 4944 of the Internal Revenue Code; or

(4) make any taxable expenditure as defined in section 4945(d) of the Internal Revenue Code.

NEW SECTION. **Section 102. Exceptions applicable to split-interest trusts.** With respect to split-interest

trusts:

(1) [Subsections (2) and (3) of section 101] do not apply to any trust described in section 4947(b)(3) of the Internal Revenue Code.

(2) [Section 101] does not apply with respect to any of the following:

(a) any amounts payable under the terms of such trust to income beneficiaries, unless a deduction was allowed under section 170(f)(2)(B), 2055(e)(2)(B), or 2522(c)(2)(B) of the Internal Revenue Code;

(b) any amounts in trust other than amounts for which a deduction was allowed under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522 of the Internal Revenue Code, if the amounts are segregated, as that term is defined in section 4947(a)(3) of the Internal Revenue Code, from amounts for which no deduction was allowable; or

(c) any amounts irrevocably transferred in trust before May 27, 1969.

NEW SECTION. **Section 103. Incorporation in trust instruments.** The provisions of [sections 100 through 102] shall be considered to be contained in the instrument creating every trust to which [sections 99 through 104] apply. Any provision of the instrument inconsistent with or contrary to [sections 99 through 104] is without effect.

NEW SECTION. **Section 104. Proceedings.** (1) A

proceeding contemplated by section 101(1)(3) of the federal Tax Reform Act of 1969 (Public Law 91-172) may be commenced pursuant to [section 179] by the organization involved. All specifically named beneficiaries of the organization and the attorney general shall be parties to the proceedings. Notwithstanding [section 165], this provision is not exclusive and does not limit any jurisdiction that otherwise exists.

(2) If an instrument creating a trust affected by this section has been recorded, a notice of pendency of judicial proceedings under this section shall be recorded in a similar manner within 10 days from the commencement of the proceedings. A duly certified copy of any final judgment or decree in the proceedings shall be similarly recorded.

NEW SECTION. **Section 105. General powers of trustee.** A trustee has the following powers without the need to obtain court authorization:

(1) the powers conferred by the trust instrument;

(2) except as limited in the trust instrument, the powers conferred by statute; and

(3) except as limited in the trust instrument, the power to perform any act that a trustee would perform for the purposes of the trust under the standard of care provided in [section 89].

NEW SECTION. **Section 106.** Power of court to relieve

trustee from restrictions on powers. [Sections 109 through 137] do not affect the power of a court to relieve a trustee from restrictions on the exercise of powers under the trust instrument.

NEW SECTION. **Section 107. Exercise of powers subject to trustee's duties.** The grant of a power to a trustee, whether by the trust instrument, by statute, or by the court, does not in itself require or permit the exercise of the power. The exercise of a power by a trustee is subject to the trustee's fiduciary duties.

NEW SECTION. **Section 108. Application of rules governing trustees' powers.** An instrument that incorporates the powers provided in former Title 72, chapter 21, ("Montana Trustees' Powers Act") shall be considered to refer to the powers provided [sections 109 through 137]. For this purpose, the trustee's powers under former Title 72, chapter 21, ("Montana Trustees' Powers Act") are not diminished and the trustee is not required to obtain court approval for exercise of a power for which court approval was not required by former law.

NEW SECTION. **Section 109. Collecting and holding property.** The trustee has the power to collect, hold, and retain trust property received from a trustor or any other person until, in the judgment of the trustee, disposition of the property should be made. The property may be retained

even though it includes property in which the trustee is personally interested.

NEW SECTION. **Section 110. Receiving additions to trust.** The trustee has the power to accept additions to the property of the trust from a trustor or any other person.

NEW SECTION. **Section 111. Participation in business -- change in form of business.** The trustee has the power to continue to participate in the operation of any business or other enterprise that is part of the trust property and may effect incorporation, dissolution, or other change in the form of the organization of the business or enterprise.

NEW SECTION. **Section 112. Investments.** The trustee has the power to invest in any kind of property, whether real, personal, or mixed.

NEW SECTION. **Section 113. Investments in obligations of United States government.** In the absence of an express provision to the contrary in a trust instrument, whenever the instrument directs or permits investment in obligations of the United States government, the trustee has the power to invest in those obligations directly or in the form of an interest in a money market mutual fund registered under the Investment Company Act of 1940 (15 U.S.C. section 80a-1 et seq.) or an investment vehicle authorized for the collective investment of trust funds pursuant to section 9.18 of Title 12 of the Code of Federal Regulations, the portfolios of

which are limited to United States government obligations and to repurchase agreements fully collateralized by United States government obligations.

NEW SECTION. **Section 114.** **Deposits.** (1) The trustee has the power to deposit trust funds at reasonable interest with any of the following:

(a) an insured commercial or savings bank;

(b) an insured building and loan association; or

(c) an insured credit union.

(2) A trustee may deposit trust funds as described in subsection (1) in a financial institution operated by, or that is an affiliate of, the trustee. For the purpose of this subsection, "affiliate" means a corporation that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with another domestic or foreign corporation.

(3) This section does not limit the power of a trustee in a proper case to deposit trust funds in institutions as described in subsection (1) that are subject to notice or other conditions respecting withdrawal prescribed by law or governmental regulation.

(4) Nothing in this section prevents the trustee from holding an amount of trust property reasonably necessary for the orderly administration of the trust in the form of cash or in a checking account without interest.

NEW SECTION. **Section 115.** **Acquisition and disposition of property.** The trustee has the power to acquire or dispose of property, for cash or on credit, at public or private sale, or by exchange.

NEW SECTION. **Section 116.** **Management of property.** The trustee has the power to manage, control, divide, develop, improve, exchange, partition, change the character of, or abandon trust property or any interest therein.

NEW SECTION. **Section 117.** **Encumbrances.** The trustee has the power to encumber, mortgage, or pledge trust property for a term within or extending beyond the term of the trust in connection with the exercise of any power vested in the trustee.

NEW SECTION. **Section 118.** **Repairs and alterations of property.** The trustee has the power to do any of the following:

(1) make ordinary or extraordinary repairs, alterations, improvements in buildings or other trust property;

(2) demolish any improvements; or

(3) raze existing or erect new party walls or buildings.

NEW SECTION. **Section 119.** **Development of land.** The trustee has the power to do any of the following:

(1) subdivide or develop land;

(2) dedicate land to public use;

(3) make or obtain the vacation of plats and adjust boundaries;

(4) adjust differences in valuation on exchange or partition by giving or receiving consideration; or

(5) dedicate easements to public use without consideration.

NEW SECTION. **Section 120. Leases.** The trustee has the power to enter into a lease for any purpose as lessor or lessee with or without the option to purchase or renew and for a term within or extending beyond the term of the trust.

NEW SECTION. **Section 121. Mineral leases.** The trustee has the power to enter into a lease or arrangement for exploration and removal of gas, oil, or other minerals, and to enter into a community oil lease or a pooling or utilization agreement, and for a term within or extending beyond the term of the trust.

NEW SECTION. **Section 122. Options.** The trustee has the power to grant an option involving disposition of trust property or to take an option for the acquisition of any property, and an option may be granted or taken that is exercisable beyond the term of the trust.

NEW SECTION. **Section 123. Voting rights with respect to corporate shares, memberships, or property.** With respect to any shares of stock of a domestic or foreign corporation,

any membership in a nonprofit corporation, or any other property, a trustee has the power to do any of the following:

(1) vote in person and give proxies to exercise any voting rights with respect to the shares, memberships, or property;

(2) waive notice of a meeting or give consent to the holding of a meeting; or

(3) authorize, ratify, approve, or confirm any action that could be taken by shareholders, members, or property owners.

NEW SECTION. **Section 124. Payment of calls and assessments.** The trustee has the power to pay calls, assessments, and any other sums chargeable or accruing against or on account of securities.

NEW SECTION. **Section 125. Stock subscriptions and conversions.** The trustee has the power to sell or exercise stock subscription or conversion rights.

NEW SECTION. **Section 126. Consent to change in form of business -- voting trusts.** The trustee has the power to consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise, and to participate in voting trusts, pooling arrangements, and foreclosures, and in connection therewith, to deposit

securities with and transfer title and delegate discretions to any protective or other committee as the trustee may consider advisable.

NEW SECTION. **Section 127. Holding securities in name of nominee.** The trustee has the power to hold a security in the name of a nominee or in other form without disclosure of the trust so that title to the security may pass by delivery, but the trustee is liable for any act of the nominee in connection with the security so held.

NEW SECTION. **Section 128. Insurance.** The trustee has the power to insure the property of the trust against damage or loss and to insure the trustee against liability with respect to third persons.

NEW SECTION. **Section 129. Borrowing money.** The trustee has the power to borrow money for any trust purpose to be repaid from trust property.

NEW SECTION. **Section 130. Payment and settlement of claims.** The trustee has the power to do any of the following:

(1) pay or contest any claim;

(2) settle a claim by or against the trust by compromise, arbitration, or otherwise; or

(3) release, in whole or in part, any claim belonging to the trust.

NEW SECTION. **Section 131. Payment of taxes, trustee's**

compensation, and other expenses. The trustee has the power to pay taxes, assessments, reasonable compensation of the trustee and of employees and agents of the trust, and other expenses incurred in the collection, care, administration, and protection of the trust.

NEW SECTION. **Section 132. Loans to beneficiary.** The trustee has the following powers:

(1) to make loans out of trust property to the beneficiary on terms and conditions that the trustee determines are fair and reasonable under the circumstances; and

(2) to guarantee loans to the beneficiary by encumbrances on trust property.

NEW SECTION. **Section 133. Distribution to beneficiaries under legal disability.** The trustee has the power to pay any sum distributable to a beneficiary, without regard to whether the beneficiary is under a legal disability, by paying the sum to the beneficiary or by paying the sum to another person for the use or benefit of the beneficiary.

NEW SECTION. **Section 134. Nature and value of distributions.** The trustee has the power to effect distribution of property and money in divided or undivided interests and to adjust resulting differences in valuation. A distribution in kind may be made pro rata or non-pro rata.

NEW SECTION. **Section 135.** **Hiring persons.** The trustee has the power to hire persons, including accountants, attorneys, auditors, investment advisors, or other agents, even if they are associated or affiliated with the trustee, to advise or assist the trustee in the performance of administrative duties.

NEW SECTION. **Section 136.** **Execution and delivery of instruments.** The trustee has the power to execute and deliver all instruments which are needed to accomplish or facilitate the exercise of the powers vested in the trustee.

NEW SECTION. **Section 137.** **Actions and proceedings.** The trustee has the power to prosecute or defend actions, claims, or proceedings for the protection of trust property and of the trustee in the performance of the trustee's duties.

NEW SECTION. **Section 138.** **Short title.** [Sections 138 through 150] may be cited as the "Revised Uniform Principal and Income Act".

NEW SECTION. **Section 139.** **Definitions.** As used in [sections 138 through 150], the following definitions apply:

(1) "Income beneficiary" means the person to whom income is presently payable or for whom it is accumulated for distribution as income.

(2) "Inventory value" means the adjusted basis for federal income tax purposes.

(3) "Remainder beneficiary" means the person entitled to principal, including income which has been accumulated and added to principal.

(4) "Trustee" means the original trustee, any succeeding or added trustee, and the personal representative of a decedent's estate whenever a provision of this part is applicable to the estate.

NEW SECTION. **Section 140.** **Duty of trustee as to receipts and expenditures.** (1) A trust shall be administered with due regard to the respective interests of income beneficiaries and remainder beneficiaries. A trust is so administered with respect to the allocation of receipts and expenditures if a receipt is credited or an expenditure is charged to income or principal or partly to each in any of the following ways:

(a) in accordance with the terms of the trust instrument, notwithstanding contrary provisions of this part;

(b) in the absence of any contrary terms of the trust instrument, in accordance with the provisions of this part; or

(c) if neither subsection (a) nor (b) is applicable, in accordance with the standard of care provided in [section 89] and with what is reasonable and equitable in view of the interests of those entitled to income as well as of those

entitled to principal.

(2) If the trust gives the trustee discretion in crediting a receipt or charging an expenditure to income or principal or partly to each, no inference that the trustee has improperly exercised such discretion arises from the fact that the trustee has made an allocation contrary to a provision of this part.

NEW SECTION. **Section 141.** Income -- principal -- charges. (1) Income is the return in money or property derived from the use of principal, including return received as:

(a) rent of real or personal property, including sums received for cancellation or renewal of a lease;

(b) interest on money lent, including sums received as consideration for the prepayment of principal except as provided in [section 145] on bond premium and bond discount;

(c) income earned during administration of a decedent's estate as provided in [section ~~144~~ 143];

(d) corporate distributions as provided in [section ~~145~~ 144];

(e) accrued increment on bonds or other obligations issued at discount as provided in [section 145];

(f) receipts from business and farming operations as provided in [section 146];

(g) receipts from disposition of natural resources as

provided in [sections 147 and 148]; or

(h) receipts from other principal subject to depletion as provided in [section 149].

(2) Principal is the property which has been set aside by the owner or the person legally empowered so that it is held in trust eventually to be delivered to a remainder beneficiary, while the return or use of the principal is in the meantime taken or received by or held for accumulation for an income beneficiary. Principal includes the following:

(a) consideration received by the trustee on the sale or other transfer of principal or a repayment of a loan or as a refund or replacement or change in the form of principal;

(b) proceeds of property taken on eminent domain proceedings;

(c) proceeds of insurance upon property forming part of the principal except proceeds of insurance upon a separate interest of an income beneficiary;

(d) stock dividends, receipts on liquidation of a corporation, and other corporate distributions as provided in [section 144];

(e) receipts from the disposition of corporate securities as provided in [section 145];

(f) royalties and other receipts from disposition of natural resources as provided in [sections 147 and 148];

(g) receipts from other principal subject to depletion as provided in [section 149];

(h) any profit resulting from any change in the form of principal; or

(i) any allowances for depreciation established under [section 150(1)(b)].

(3) After determining income and principal in accordance with the terms of the trust instrument or of this part, the trustee shall charge to income or principal the expenses and other charges as provided in [section 150].

NEW SECTION. **Section 142. When right to income arises -- apportionment of income.** (1) An income beneficiary is entitled to income from the date specified in the trust instrument or, if none is specified, from the date an item of property becomes subject to the trust. In the case of an item of property becoming subject to a trust by reason of a person's death, it becomes subject to the trust as of the date of the death of the person even though there is an intervening period of administration of the person's estate.

(2) Upon property becoming subject to a trust by reason of a person's death:

(a) Receipts due but not paid at the date of death of the person are principal.

(b) Receipts in the form of periodic payments (other than corporate distributions to stockholders), including

rent, interest, or annuities, not due at the date of the death of the person shall be treated as accruing from day to day. That portion of the receipt accruing before the date of death is principal and the balance is income.

(3) In all other cases, any receipt from income-producing property is income even though the receipt was earned or accrued in whole or in part before the date when the property became subject to the trust.

(4) On termination of an income interest, the income beneficiary whose interest is terminated, or his or her estate, is entitled to income:

(a) undistributed on the date of termination;

(b) due but not paid to the trustee on the date of termination; and

(c) in the form of periodic payments (other than corporate distributions to stockholders), including rent, interest, or annuities, not due on the date of termination, accrued from day to day.

(5) Corporate distributions to stockholders shall be treated as due on the day fixed by the corporation for determination of stockholders of record entitled to distribution or, if no date is fixed, on the date of declaration of the distribution by the corporation.

NEW SECTION. **Section 143. Income earned during administration of decedent's estate.** (1) Unless the will

otherwise provides and subject to subsection (2), all expenses incurred in connection with the settlement of a decedent's estate, including debts, funeral expenses, estate taxes, interest and penalties concerning taxes, family allowances, fees of attorneys and personal representatives, and court costs, shall be charged against the principal of the estate.

(2) Unless the will otherwise provides, income from the property of a decedent's estate after the death of the testator and before distribution, including income from property used to discharge liabilities, shall be determined in accordance with the rules applicable to a trustee under [sections 1 through 164] and distributed as follows:

(a) to specific legatees and devisees, the income from the property bequeathed or devised to them respectively, less taxes, ordinary repairs, and other expenses of management and operation of the property, and an appropriate portion of interest accrued since the death of the testator and of taxes imposed on income (excluding taxes on capital gains) that accrue during the period of administration;

(b) to all other legatees and devisees, except legatees of pecuniary bequests not in trust, the balance of the income, less the balance of taxes, ordinary repairs, and other expenses of management and operation of all property from which the estate is entitled to income, interest

accrued since the death of the testator, and taxes imposed on income (excluding taxes on capital gains) that accrue during the period of administration, in proportion to their respective interests in the undistributed property of the estate computed at times of distribution on the basis of inventory value.

(3) Income received by a trustee under subsection (2) shall be treated as income of the trust.

NEW SECTION. **Section 144. Corporate distributions.** (1) Corporate distributions of shares of the distributing corporation, including distributions in the form of a stock split or stock dividend, are principal. A right to subscribe to shares or other securities issued by the distributing corporation accruing to stockholders on account of their stock ownership and the proceeds of any sale of the right, are principal.

(2) Except to the extent that the corporation indicates that some part of a corporate distribution is a settlement of preferred or guaranteed dividends accrued since the trustee became a stockholder or is in lieu of an ordinary cash dividend, a corporate distribution is principal if the distribution is pursuant to any of the following:

(a) a call of shares;

(b) a merger, consolidation, reorganization, or other

plan by which assets of the corporation are acquired by another corporation; or

(c) a total or partial liquidation of the corporation, including any distribution which the corporation indicates is a distribution in total or partial liquidation or any distribution of assets, other than cash, pursuant to a court decree or final administrative order by a government agency ordering distribution of the particular assets.

(3) Distributions made from ordinary income by a regulated investment company or by a trust qualifying and electing to be taxed under federal law as a real estate investment trust are income. All other distributions made by the company or trust, including distributions from capital gains, depreciation, or depletion, whether in the form of cash or an option to take new stock or cash or an option to purchase additional shares, are principal.

(4) Except as provided in subsections (1) through (3), all corporate distributions are income, including cash dividends, distributions of or rights to subscribe to shares or securities or obligations of corporations other than the distributing corporation, and the proceeds of the rights or property distributions. Except as provided in subsections (2) and (3), if the distributing corporation gives a stockholder an option to receive a distribution either in cash or in its own shares, the distribution chosen is

income.

(5) The trustee may rely upon any statement of the distributing corporation as to any fact relevant under any provision of this part concerning the source or character of dividends or distributions of corporate assets.

NEW SECTION. **Section 145.** **Bond premium and discount.** (1) Bonds or other obligations for the payment of money are principal at their inventory value, except as provided in subsection (2) for discount bonds. No provision shall be made for amortization of bond premiums or for accumulation for discount. The proceeds of sale, redemption, or other disposition of the bonds or obligations are principal.

(2) The increment in value of a bond or other obligation for the payment of money payable at a future time in accordance with a fixed schedule of appreciation in excess of the price at which it was issued is distributable as income. The increment in value is distributable to the beneficiary who was the income beneficiary at the time of increment from the first principal cash available or, if none is available, when realized by sale, redemption, or other disposition. Whenever unrealized increment is distributed as income but out of principal, the principal shall be reimbursed for the increment when realized.

NEW SECTION. **Section 146.** **Business and farming operations.** (1) If a trustee uses any part of the principal

in the continuance of a business of which the trustor was a sole proprietor or a partner, the net profits of the business, computed in accordance with recognized methods of accounting for a comparable business, are income. If a loss results in any fiscal or calendar year, the loss falls on principal and may not be carried into any other fiscal or calendar year for purposes of calculating net income.

(2) Recognized methods of accounting for a comparable business shall be used to determine income from an agricultural or farming operation, including the raising of animals or the operation of a nursery.

NEW SECTION. **Section 147.** Disposition of natural resources. (1) If any part of the principal consists of a right to receive royalties, overriding or limited royalties, working interests, production payments, net profit interests, or other interests in minerals or other natural resources in, on, or under land, the receipts from taking the natural resources from the land shall be allocated as follows:

(a) If received as rent on a lease or extension payments on a lease, the receipts are income.

(b) If received from a production payment, the receipts are income to the extent of any factor for interest or its equivalent provided in the governing instrument. There shall be allocated to principal the fraction of the

balance of the receipts which the unrecovered cost of the production payment bears to the balance owed on the production payment, exclusive of any factor for interest or its equivalent. The receipts not allocated to principal are income.

(c) If received as a royalty, overriding or limited royalty or bonus, or from a working, net profit, or any other interest in minerals or other natural resources, receipts not provided for in subsections (1)(a) and (1)(b) shall be apportioned on a yearly basis in accordance with this paragraph whether or not any natural resource was being taken from the land at the time the trust was established. The receipts shall be allocated entirely to income or apportioned between income and principal as the trustee in its discretion may determine, but the amount added to principal as an allowance for depletion may not exceed the lesser of:

(i) the percentage of gross receipts allowed as a deduction for depletion in computing taxable income for federal income tax purposes or

(ii) 50% of the net receipts remaining after payment of expenses, direct and indirect, computed without allowance for depletion.

(2) This section does not apply to timber, water, soil, sod, dirt, turf, or mosses.

NEW SECTION. **Section 148.** **Timber.** If any part of the principal consists of land from which merchantable timber may be removed, the receipts from taking the timber from the land shall be allocated in accordance with [section 140(1)(c)].

NEW SECTION. **Section 149.** **Other property subject to depletion.** Except as provided in [sections 147 and 148], if the principal consists of property subject to depletion, including leaseholds, patents, copyrights, royalty rights, and rights to receive payments on a contract for deferred compensation, receipts from the property, not in excess of 5% per year of its inventory value, are income, and the balance is principal.

NEW SECTION. **Section 150.** **Charges against income and principal.** (1) The following charges shall be made against income:

(a) ordinary expenses incurred in connection with the administration, management, or preservation of the trust property, including:

(i) regularly recurring taxes assessed against any portion of the principal;

(ii) water rates;

(iii) premiums on insurance taken upon the interests of the income beneficiary, remainder beneficiary, or trustee;

(iv) interest paid by the trustee; and

(v) ordinary repairs;

(b) a reasonable allowance for depreciation on property subject to depreciation under generally accepted accounting principles, but no allowance may be made for depreciation on that portion of any real property used by a beneficiary as a residence or for depreciation of any property held by the trustee on July 1, 1983, for which the trustee was not then making an allowance for depreciation;

(c) not less than one-half of court costs, attorney fees, and other fees on periodic judicial accounting, unless the court directs otherwise;

(d) court costs, attorney fees, and fees on other accountings or judicial proceedings if the matter primarily concerns the income interest, unless the court directs otherwise;

(e) not less than one-half of the trustee's regular compensation, whether based on a percentage of principal or income, and all expenses reasonably incurred for current management of principal and application of income, unless the court directs otherwise; and

(f) any tax levied upon receipts defined as income under [sections 138 through 150] or the trust instrument and payable by the trustee.

(2) If charges against income are of unusual amount, the trustee may, by means of reserves or other reasonable

means, charge them over a reasonable period of time and withhold from distribution sufficient sums to regularize distributions.

(3) (a) The following charges shall be made against principal:

(i) trustee's compensation not chargeable to income under subsections (1)(d) and (1)(e);

(ii) special compensation of trustees;

(iii) expenses reasonably incurred in connection with principal, court costs, and attorney fees primarily concerning matters of principal; and

(iv) trustee's compensation computed on principal as an acceptance, distribution, or termination fee;

(b) charges not provided for in subsection (1), including:

(i) the costs of investing and reinvesting principal;

(ii) the payments on principal of an indebtedness, including a mortgage amortized by periodic payments of principal;

(iii) expenses for preparation of property for rental or sale; and

(iv) unless the court directs otherwise, expenses incurred in maintaining or defending any action to construe the trust or protect it or the property or assure the title of any trust property;

(c) extraordinary repairs or expenses incurred in making a capital improvement to principal, including special assessments, but a trustee may establish an allowance for ~~deprecation~~ DEPRECIATION out of income to the extent permitted by subsection (1)(b) and by [section 146];

(d) any tax levied upon profit, gain, or other receipts allocated to principal, notwithstanding denomination of the tax as an income tax by the taxing authority; and

(e) if an estate or inheritance tax is levied in respect to a trust in which both an income beneficiary and a remainder beneficiary have an interest, any amount apportioned to the trust, including interest and penalties, even though the income beneficiary also has rights in the principal.

(4) Regularly recurring charges payable from income shall be apportioned to the same extent and in the same manner that income is apportioned under [section 142].

NEW SECTION. **Section 151.** **Breach of trust.** A violation by the trustee of any duty that the trustee owes the beneficiary is a breach of trust.

NEW SECTION. **Section 152.** **Trustee's liability to beneficiary for acts of agent.** (1) Except as provided in subsection (2), the trustee is not liable to the beneficiary for the acts or omissions of an agent.

(2) The trustee is liable to the beneficiary for an act or omission of an agent employed by the trustee in the administration of the trust that would be a breach of the trust if committed by the trustee under any of the following circumstances:

(a) whenever the trustee has the power to direct the act of the agent;

(b) whenever the trustee delegates to the agent the authority to perform an act that the trustee is under a duty not to delegate;

(c) whenever the trustee does not use reasonable care in the selection of the agent or the retention of the agent selected by the trustee;

(d) whenever the trustee does not exercise proper supervision over the agent's conduct in a case where the trustee has the power to supervise the agent;

(e) whenever the trustee conceals the act of the agent; or

(f) whenever the trustee neglects to take reasonable steps to compel the agent to redress the wrong in a case where the trustee knows of the agent's acts or omissions.

(3) The liability of a trustee for acts or omissions of agents that occurred before October 1, 1989, is governed by prior law and not by this section.

NEW SECTION. **Section 153.** Trustee's liability to

beneficiary for acts of cotrustee. (1) Except as provided in subsection (2), a trustee is not liable to the beneficiary for a breach of trust committed by a cotrustee.

(2) A trustee is liable to the beneficiary for a breach committed by a cotrustee under any of the following circumstances:

(a) whenever the trustee participates in a breach of trust committed by the cotrustee;

(b) whenever the trustee improperly delegates the administration of the trust to the cotrustee;

(c) whenever the trustee approves, knowingly acquiesces in, or conceals a breach of trust committed by the cotrustee;

(d) whenever the trustee negligently enables the cotrustee to commit a breach of trust; or

(e) whenever the trustee neglects to take reasonable steps to compel the cotrustee to redress a breach of trust in a case where the trustee knows or has information from which the trustee reasonably should have known of the breach.

(3) The liability of a trustee for acts or omissions of a cotrustee that occurred before October 1, 1989, is governed by prior law and not by this section.

NEW SECTION. **Section 154.** Trustee's liability to beneficiary for acts of predecessor. (1) Except as provided

in subsection (2), a successor trustee is not liable to the beneficiary for a breach of trust committed by a predecessor trustee.

(2) A successor trustee is liable to the beneficiary for breach of trust involving acts or omissions of a predecessor trustee in any of the following circumstances:

(a) whenever the successor trustee knows or has information from which the successor trustee reasonably should have known of a situation constituting a breach of trust committed by the predecessor trustee, and the successor trustee improperly permits it to continue;

(b) whenever the successor trustee neglects to take reasonable steps to compel the predecessor trustee to deliver the trust property to the successor trustee; or

(c) whenever the successor trustee neglects to take reasonable steps to redress a breach of trust committed by the predecessor trustee in a case where the successor trustee knows or has information from which the successor trustee should have known of the predecessor trustee's breach.

(3) The liability of a trustee for acts or omissions of a predecessor trustee that occurred before October 1, 1989, is governed by prior law and not by this section.

NEW SECTION. **Section 155. Remedies for breach of trust.** (1) If a trustee commits a breach of trust, or

threatens to commit a breach of trust, a beneficiary or cotrustee of the trust may commence a proceeding for any of the following purposes that is appropriate:

(a) to compel the trustee to perform the trustee's duties;

(b) to enjoin the trustee from committing a breach of trust;

(c) to compel the trustee to redress a breach of trust by payment of money or otherwise;

(d) to appoint a receiver or temporary trustee to take possession of the trust property and administer the trust;

(e) to remove the trustee;

(f) subject to [section 210], to set aside acts of the trustee;

(g) to reduce or deny compensation of the trustee;

(h) subject to [section 210], to impose an equitable lien or a constructive trust on trust property; or

(i) subject to [section 210], to trace trust property that has been wrongfully disposed of and recover the property or its proceeds.

(2) The provision of remedies for breach of trust in subsection (1) does not prevent resort to any other appropriate remedy provided by statute or the common law.

NEW SECTION. **Section 156. Remedies for breach exclusively in equity.** The remedies of a beneficiary against

the trustee are exclusively in equity.

NEW SECTION. **Section 157. Measure of liability for breach of trust.** (1) If the trustee commits a breach of trust, the trustee is chargeable with any of the following that is appropriate under the circumstances:

(a) any loss or depreciation in value of the trust estate resulting from the breach of trust, with interest;

(b) any profit made by the trustee through the breach of trust, with interest; or

(c) any profit that would have accrued to the trust estate if the loss of profit is the result of the breach of trust.

(2) If the trustee has acted reasonably under the circumstances as known to the trustee, the court, in its discretion, may excuse the trustee in whole or in part from liability under subsection (1) if it would be equitable to do so.

NEW SECTION. **Section 158. Measure of liability for interest.** If the trustee is liable for interest pursuant to [section 157], the trustee is liable for the greater of the following amounts:

(1) the amount of interest that accrues at the legal rate on judgments; or

(2) the amount of interest actually received.

NEW SECTION. **Section 159. Limitations on proceedings**

against trustee. (1) Unless a claim is previously barred by adjudication, consent, limitation, or otherwise:

(a) If a beneficiary has received an interim or final account in writing, or other written report, that adequately discloses the existence of a claim against the trustee for breach of trust, the claim is barred as to that beneficiary unless a proceeding to assert the claim is commenced within 3 years after receipt of the account or report. An account or report adequately discloses existence of a claim if it provides sufficient information so that the beneficiary knows of the claim or reasonably should have inquired into the existence of the claim.

(b) If an interim or final account or other report does not adequately disclose the existence of a claim against the trustee for breach of trust, the claim is barred as to that beneficiary unless a proceeding to assert the claim is commenced within 3 years after the beneficiary discovered, or reasonably should have discovered, the existence of the claim.

(2) For the purpose of subsection (1), a beneficiary is considered to have received an account or report, as follows:

(a) in the case of an adult who is reasonably capable of understanding the account or report, if it is received by the adult personally;

(b) in the case of an adult who is not reasonably capable of understanding the account or report, if it is received by the person's legal representative, including a guardian ad litem or other person appointed for this purpose; or

(c) in the case of a minor, if it is received by the minor's guardian or, if the minor does not have a guardian, if it is received by the minor's parent so long as the parent does not have a conflict of interest.

(3) The limitations period applicable to actions by a beneficiary against a trustee on a claim that arose before October 1, 1989, is governed by this section, except that a claim arising before October 1, 1989, is not barred by this section until October 1, 1990.

NEW SECTION. **Section 160.** **Exculpation of trustee.** (1) Except as provided in subsection (2), the trustee can be relieved of liability for breach of trust by provisions in the trust instrument.

(2) A provision in the trust instrument is not effective to relieve the trustee of liability:

(a) for breach of trust committed intentionally, with gross negligence, or with reckless indifference to the interest of the beneficiary; or

(b) for any profit that the trustee derives from a breach of trust.

NEW SECTION. **Section 161.** **Nonliability for following instructions under revocable trust.** (1) Notwithstanding [section 160], a trustee of a revocable trust is not liable to a beneficiary for any act performed or omitted pursuant to written directions from the person holding the power to revoke, including a person to whom the power to direct the trustee is delegated.

(2) Subsection (1) applies to a trust that is revocable in part with respect to the interest of the beneficiary in that part of the trust property.

NEW SECTION. **Section 162.** **Consent of beneficiary to relieve trustee of liability for breach of trust.** (1) Except as provided in subsections (2) and (3), a beneficiary may not hold the trustee liable for an act or omission of the trustee as a breach of trust if the beneficiary consented to the act or omission before or at the time of the act or omission.

(2) The consent of the beneficiary does not preclude the beneficiary from holding the trustee liable for a breach of trust in any of the following circumstances:

(a) whenever the beneficiary was under an incapacity at the time of the consent or of the act or omission;

(b) whenever the beneficiary at the time consent was given did not know of his rights and of the material facts that the trustee knew or should have known and that the

trustee did not reasonably believe that the beneficiary knew; or

(c) whenever the consent of the beneficiary was induced by improper conduct of the trustee.

(3) Whenever the trustee has an interest in the transaction adverse to the interest of the beneficiary, the consent of the beneficiary does not preclude the beneficiary from holding the trustee liable for a breach of trust under any of the circumstances described in subsection (2) or whenever the transaction to which the beneficiary consented was not fair and reasonable to the beneficiary.

NEW SECTION. **Section 163. Discharge of trustee's liability by release or contract.** (1) Except as provided in subsection (2), a beneficiary may be precluded from holding the trustee liable for a breach of trust by the beneficiary's release or contract effective to discharge the trustee's liability to the beneficiary for that breach.

(2) A release or contract is not effective to discharge the trustee's liability for a breach of trust in any of the following circumstances:

(a) whenever the beneficiary was under an incapacity at the time of making the release or contract;

(b) whenever the beneficiary did not know of his rights and of the material facts:

(i) that the trustee knew or reasonably should have

known; and

(ii) that the trustee did not reasonably believe that the beneficiary knew;

(c) whenever the release or contract of the beneficiary was induced by improper conduct of the trustee; or

(d) whenever the transaction involved a bargain with the trustee that was not fair and reasonable.

NEW SECTION. **Section 164. Discharge of trustee's liability by subsequent affirmance.** (1) Except as provided in subsection (2), if the trustee, in breach of trust, enters into a transaction that the beneficiary may at his option reject or affirm, and the beneficiary affirms the transaction, the beneficiary may not thereafter reject it and hold the trustee liable for any loss occurring after the trustee entered into the transaction.

(2) The affirmance of a transaction by the beneficiary does not preclude the beneficiary from holding a trustee liable for a breach of trust if, at the time of the affirmance, any of the following circumstances existed:

(a) the beneficiary was under an incapacity;

(b) the beneficiary did not know of his rights and of the material facts:

(i) that the trustee knew or reasonably should have known; and

(ii) that the trustee did not reasonably believe that the beneficiary knew;

(c) the affirmance was induced by improper conduct of the trustee; or

(d) the transaction involved a bargain with the trustee that was not fair and reasonable.

NEW SECTION. **Section 165. Subject matter jurisdiction.** (1) The district court having jurisdiction over the trust pursuant to [sections 1 through 215] has exclusive jurisdiction of proceedings concerning the internal affairs of trusts.

(2) The district court having jurisdiction over the trust pursuant to [sections 1 through 215] has concurrent jurisdiction of the following:

(a) actions and proceedings to determine the existence of trusts;

(b) actions and proceedings by or against creditors or debtors of trusts; and

(c) other actions and proceedings involving trustees and third persons.

NEW SECTION. **Section 166. Full-power court.** In proceedings concerning the internal affairs of trusts commenced pursuant to [sections 1 through 215], the court has all the powers of a district court exercising its general jurisdiction.

NEW SECTION. **Section 167. Principal place of administration of trust.** (1) The principal place of administration of the trust is the usual place where the day-to-day activity of the trust is carried on by the trustee or its representative who is primarily responsible for the administration of the trust.

(2) If the principal place of administration of the trust cannot be determined under subsection (1), it shall be determined as follows:

(a) if the trust has a single trustee, the principal place of administration of the trust is the trustee's residence or usual place of business; or

(b) if the trust has more than one trustee, the principal place of administration of the trust is the residence or usual place of business of any of the cotrustees as agreed upon by them. If not agreed upon by the cotrustees, the principal place of administration of the trust is the residence or usual place of business of any of the cotrustees.

NEW SECTION. **Section 168. Jurisdiction over trustees and beneficiaries.** Subject to [section 169]:

(1) by accepting the trusteeship of a trust having its principal place of administration in this state the trustee submits personally to the jurisdiction of the court under [sections 1 through 215]; and

(2) to the extent of their interests in the trust, all beneficiaries of a trust having its principal place of administration in this state are subject to the jurisdiction of the court under [sections 1 through 215].

NEW SECTION. **Section 169. Basis of jurisdiction over trust, trust property, and trust parties.** The court may exercise jurisdiction in proceedings under this division on any basis permitted by Rule 4 of the Rules of Civil Procedure.

NEW SECTION. **Section 170. Venue.** (1) The proper county for commencement of a proceeding pursuant to [sections 165 through 178] is either of the following:

(a) in the case of a living trust, the county where the principal place of administration of the trust is located; or

(b) in the case of a testamentary trust, either the county where the decedent's estate is administered or where the principal place of administration of the trust is located.

(2) If a living trust has no trustee, the proper county for commencement of a proceeding for appointing a trustee is the county where the trust property, or some portion of the trust property, is located.

(3) Except as otherwise provided in subsections (1) and (2), the proper county for commencement of a proceeding

pursuant to [sections 1 through 215] is determined by the rules applicable to civil actions generally.

NEW SECTION. **Section 171. Jury trial.** There is no right to a jury trial in proceedings under [sections 1 through 215] concerning the internal affairs of trusts.

NEW SECTION. **Section 172. Application of part.** This part applies to notice in proceedings commenced pursuant to [sections 1 through 215] or notice otherwise required or permitted by [sections 1 through 215].

NEW SECTION. **Section 173. Manner of mailing -- when mailing complete.** (1) If a notice or other paper is required or permitted to be mailed, it shall be sent by first-class mail.

(2) Mailing is complete when the notice or other paper is deposited in the mail, postage prepaid, addressed to the person to whom it is mailed.

NEW SECTION. **Section 174. Personal delivery instead of mailing.** If a notice or other paper is required or permitted to be mailed, it may be delivered personally to the person to whom it is required or permitted to be mailed.

NEW SECTION. **Section 175. Proof of giving notice -- conclusiveness of order.** (1) Proof of the giving of notice shall be made at or before the hearing to the satisfaction of the court.

(2) If it appears to the satisfaction of the court

that notice has been regularly given or that the party entitled to notice has waived, the court shall so find in its order. When the order becomes final, it is conclusive on all persons, whether or not in being.

NEW SECTION. **Section 176.** **Additional notice.** (1) The court may, on its own motion or on motion of a trustee or other person interested in the trust, require that further or additional notice be given at any state of the proceeding. The court may prescribe the form and method of the notice to be given.

(2) A petitioner or other person required to give notice may cause notice to be given to any person interested in the trust without the need for a court order.

NEW SECTION. **Section 177.** **Shortening time.** The court may for good cause shorten the time for giving a notice.

NEW SECTION. **Section 178.** **Notice of postponed hearings.** The court may continue or postpone any hearing, from time to time, in the interest of justice, and no further notice of the continued or postponed hearing is required unless otherwise ordered by the court.

NEW SECTION. **Section 179.** **Petitioners -- grounds for petition.** (1) Except as provided in [section 68], a trustee or beneficiary of a trust may petition the court under [sections 165 through 203] concerning the internal affairs of the trust or to determine the existence of the trust.

(2) Proceedings concerning the internal affairs of a trust include, but are not limited to, proceedings for any of the following purposes:

(a) determining questions of construction of a trust instrument;

(b) determining the existence or nonexistence of any immunity, power, privilege, duty, or right;

(c) determining the validity of a trust provision;

(d) ascertaining beneficiaries and determining to whom property shall pass or be delivered upon final or partial termination of the trust, to the extent the determination is not made by the trust instrument;

(e) settling the accounts and passing upon the acts of the trustee, including the exercise of discretionary powers;

(f) instructing the trustee;

(g) compelling the trustee to report information about the trust or account to the beneficiary, if:

(i) the trustee has failed to submit a requested report or account within 60 days after written request of the beneficiary; and

(ii) no report or account has been made within 6 months preceding the request;

(h) granting powers to the trustee;

(i) fixing or allowing payment of the trustee's compensation;

(j) appointing or removing a trustee;

(k) accepting the resignation of a trustee;

(l) compelling redress of a breach of the trust by any available remedy;

(m) approving or directing the modification or termination of the trust;

(n) approving or directing the combination or division of trusts;

(o) amending or conforming the trust instrument in the manner required to qualify a decedent's estate for the charitable estate tax deduction under federal law, including the addition of mandatory governing instrument requirements for a charitable remainder trust as required by final regulations and rulings of the United States internal revenue service, in any case in which all parties interested in the trust have submitted written agreement to the proposed changes or written disclaimer of interest;

(p) authorizing or directing transfer of a trust or trust property to or from another jurisdiction;

(q) directing transfer of a testamentary trust subject to continuing court jurisdiction from one county to another;

(r) approving removal of a testamentary trust from continuing court jurisdiction; or

(s) reforming or excusing compliance with the governing instrument of an organization pursuant to [section

104].

NEW SECTION. **Section 180. Commencement of proceeding.** (1) A proceeding under [sections 165 through 203] is commenced by filing a verified petition stating facts showing that the petition is authorized under this chapter and the grounds of the petition.

(2) When a petition that requires a hearing is filed with the court clerk, the clerk shall set the matter for hearing.

NEW SECTION. **Section 181. Dismissal of petition.** The court may dismiss a petition if it appears that the proceeding is not reasonably necessary for the protection of the interests of the trustee or beneficiary.

NEW SECTION. **Section 182. Notice.** At least 14 days before the time set for the hearing on the petition, the petitioner shall cause notice of the time and place of hearing to be mailed to any of the following persons who are not petitioners:

(1) all trustees;

(2) all beneficiaries who are entitled to notice; and

(3) the attorney general, if the petition is related to a charitable trust subject to the jurisdiction of the attorney general, unless the attorney general waives notice.

NEW SECTION. **Section 183. Request for special notice.** (1) If proceedings involving a trust are pending, a

beneficiary of the trust may, in person or by attorney, serve on the trustee or the trustee's attorney and file with the court clerk where the proceedings are pending a written request stating that the beneficiary desires special notice of the filing of petitions in the proceeding relating to any or all of the purposes described in [section 179] and giving an address for receiving notice by mail. Proof of service of the request on the trustee shall be filed with the court clerk when the request is filed.

(2) Except as provided in subsection (3), after serving and filing a request and proof of service pursuant to subsection (1), the beneficiary is entitled to notice pursuant to [section 182].

(3) A request for special notice made by a beneficiary whose right to notice is restricted by [section 70] is not effective.

NEW SECTION. **Section 184.** **Request for copy of petition.** If a trustee or beneficiary has served and filed either a notice of appearance, in person or by counsel, directed to the petitioner or the petitioner's counsel in connection with a particular petition and proceeding or a written request for a copy of the petition, and has given an address to which notice or a copy of the petition may be mailed or delivered, the petitioner shall cause a copy of the petition to be mailed to that person within 5 days after

service of the notice of appearance or receipt of the request.

NEW SECTION. **Section 185.** **Authority to make necessary orders -- temporary trustee.** The court in its discretion may make any orders and take any other action necessary or proper to dispose of the matters presented by the petition, including appointment of a temporary trustee to administer the trust in whole or in part.

NEW SECTION. **Section 186.** **Appeal.** An appeal may be taken from the grant or denial of any final order made under [sections 165 through 203], except the following:

(1) compelling the trustee to submit an account or report acts as trustee to a beneficiary pursuant to [section 179(2)(g)];

(2) accepting the resignation of a trustee pursuant to [section 179(2)(k)]; or

(3) approving removal of a testamentary trust from continuing court jurisdiction pursuant to [section 179(2)(r)].

NEW SECTION. **Section 187.** **Appointment of guardian ad litem.** (1) The court may, on its own motion or on request of a trustee or other person interested in the trust, appoint a guardian ad litem at any stage of a proceeding concerning the trust to represent the interest of any of the following persons, if the court determines that representation of the

interest otherwise would be inadequate:

(a) a minor;

(b) an incapacitated person;

(c) an unborn person;

(d) an unascertained person;

(e) a person whose identity or address is unknown; or

(f) a designated class of persons who are not ascertained or are not in being.

(2) If not precluded by a conflict of interest, a guardian ad litem may be appointed to represent several persons or interests.

(3) The reasonable expenses of the guardian ad litem, including compensation and attorney's fees, shall be determined by the court and paid as the court orders, either out of trust property or by the petitioner.

(4) If no guardian ad litem is appointed, an unborn person or an unascertained person is bound by an order to the extent his or her interest is adequately represented by another party having a substantially identical interest in the proceeding.

NEW SECTION. **Section 188.** **Intermittent judicial intervention in trust administration.** The administration of trusts is intended to proceed expeditiously and free of judicial intervention, subject to the jurisdiction of the court.

NEW SECTION. **Section 189.** **Enforcement of beneficiary's rights under charitable trust by attorney general.** In a case involving a charitable trust subject to the jurisdiction of the attorney general, the attorney general may petition under [sections 165 through 203].

NEW SECTION. **Section 190.** **Application of part.** (1) [Sections 190 through 195] apply to all of the following:

(a) a trust that is subject to [sections 1 through 215]; and

(b) any other trust to which the provisions of [sections 165 through 203] are made applicable by statute or trust instrument.

(2) [Sections 190 through 195] do not prevent the transfer of the place of administration of a trust or of trust property to another jurisdiction by any other available means.

NEW SECTION. **Section 191.** **Transfer of place of administration or property from Montana.** (1) The court may make an order for the transfer of the place of administration of a trust or the transfer of some or all of the trust property to a jurisdiction outside this state as provided in [sections 165 through 203].

(2) Except as otherwise provided in [sections 190 through 195], proceedings under [sections 165 through 203] are governed by [sections 190 through 195].

NEW SECTION. **Section 192.** **Contents of petition.** The petition for transfer shall set forth all of the following:

(1) the names and places of residence of the following:

(a) the trustee administering the trust in this state; and

(b) the trustee, including any domiciliary trustee, who will administer the trust or trust property in the other jurisdiction;

(2) the names, ages, and places of residence of the living beneficiaries, as far as known to the petitioner;

(3) whether the trustee who will administer the trust in the other jurisdiction has agreed to accept the trust. If so, the acceptance or a copy shall be attached as an exhibit to the petition or otherwise filed with the court;

(4) a general statement of the qualifications of the trustee who will administer the trust in the other jurisdiction and the amount of fiduciary bond, if any. If the trustee is an individual, the statement shall include the trustee's age;

(5) a general statement of the nature and value of the property of any trust of the same trustor being administered in the other jurisdiction by the trustee who will administer the trust in the other jurisdiction;

(6) the name of the court, if any, having jurisdiction

of the trustee in the other jurisdiction or of its accounts or in which a proceeding may be had with respect to administration of the trust or the trustee's accounts;

(7) a statement of the character, condition, location, and value of the trust property sought to be transferred;

(8) whether there is any pending civil action in this state against the trustee arising out of the administration of the trust sought to be transferred; and

(9) a statement of the reasons for the transfer.

NEW SECTION. **Section 193.** **Notice and hearing.** (1) At least 14 days before the time set for the hearing on the petition, the petitioner shall cause notice of the time and place of the hearing to be mailed to each of the persons named in the petition at their respective addresses as stated in the petition.

(2) Any person interested in the trust, as trustee, beneficiary, or otherwise, may appear and file written grounds in opposition to the petition.

NEW SECTION. **Section 194.** **Order granting transfer.** The court may, in its discretion, grant the petition and order the trustee to transfer the trust property or to transfer the place of administration of the trust to the other jurisdiction if, after hearing, all of the following appear to the court:

(1) the transfer of the trust property to a trustee in

another jurisdiction, or the transfer of the place of administration of the trust to another jurisdiction, will promote the best interests of the trust and those interested in it, taking into account the interest in the economical and convenient administration of the trust;

(2) the transfer will not violate the trust instrument; and

(3) any new trustee to whom the trust property is to be transferred is qualified, willing, and able to administer the trust or trust property under the trust instrument.

NEW SECTION. **Section 195.** **Manner of transfer -- discharge of trustee.** If a transfer is ordered under this chapter, the court may direct the manner of transfer and impose terms and conditions as may be just, including, but not limited to, a requirement for the substitution of a successor trustee in any pending litigation in this state. The delivery of property in accordance with the order of the court is a discharge of the trustee in relation to all property embraced in the order.

NEW SECTION. **Section 196.** **Application.** (1) [Sections 196 through 203] apply to a trust, or portion thereof, administered in a jurisdiction outside this state.

(2) [Sections 196 through 203] do not prevent the transfer of the place of administration of a trust or trust property to this state by any other available means.

NEW SECTION. **Section 197.** **Transfer of place of administration or property to Montana.** (1) The court may make an order accepting the transfer of the place of administration of a trust from another jurisdiction to this state or the transfer of some or all of the trust property in another jurisdiction to a trustee in this state as provided in [sections 196 through 203].

(2) Except as otherwise provided in [sections 196 through 203], proceedings under [sections 196 through 203] are governed by this chapter.

NEW SECTION. **Section 198.** **Venue.** (1) If the petition requests that a resident of this state be appointed trustee, the petition shall be filed in the court of the county where the proposed principal place of administration of the trust pursuant to [section 167] is located.

(2) If the petition requests that only a nonresident of this state be appointed trustee, the petition shall be filed in the court of the county where either:

(a) any beneficiary resides; or

(b) a substantial portion of the trust property to be transferred is located or will be located.

NEW SECTION. **Section 199.** **Contents of petition.** The petition for transfer shall set forth all of the following:

(1) the names and places of residence of the following:

(a) the trustee administering the trust in the other jurisdiction; and

(b) the proposed trustee to whom administration of the trust or trust property will be transferred;

(2) the names, ages, and places of residence of all living beneficiaries, as far as known to the petitioner;

(3) whether administration of the trust has been subject to supervision in a jurisdiction outside this state. If so, the petition shall state whether a petition or appropriate request for transfer of place of administration of the trust or trust property to this state has been filed, if necessary, with the court in the other jurisdiction, and the status of the petition or request.

(4) whether the trustee proposed to administer the trust in this state has agreed to accept the trust in this state. If the trustee has agreed, the acceptance shall be attached as an exhibit to the petition or otherwise filed with the court.

(5) a general statement of the qualifications of the trustee proposed to administer the trust in this state and the amount of any bond to be requested. If the trustee is an individual, the statement shall include the trustee's age.

(6) a copy of the trust instrument or a statement of the terms of the trust instrument in effect at the time the petition is filed, including all amendments thereto;

(7) a statement of the character, condition, location, and value of the trust property sought to be transferred; and

(8) a statement of the reasons for the transfer.

NEW SECTION. **Section 200. Notice and hearing.** (1) At least 14 days before the time set for the hearing on the petition, the petitioner shall cause notice of the time and place of the hearing to be mailed to each of the persons named in the petition at their respective addresses as stated in the petition.

(2) Any person interested in the trust, as trustee, beneficiary, or otherwise, may appear and file written grounds in opposition to the petition.

NEW SECTION. **Section 201. Order accepting transfer and appointing trustee.** (1) The court may, in its discretion, grant the petition and issue an order accepting transfer of trust property or the place of administration of the trust to this state and appoint a trustee to administer the trust in this state, if, after hearing, all of the following appear to the court:

(a) the transfer of the trust property to a trustee in this state, or the transfer of the place of administration of the trust to this state, will promote the best interests of the trust and those interested in it, taking into account the interest in the economical and convenient administration

of the trust;

(b) the transfer will not violate the trust instrument;

(c) the trustee appointed by the court to administer the trust in this state, and to whom the trust property is to be transferred, is qualified, willing, and able to administer the trust or trust property under the trust instrument; and

(d) the proper court in the other jurisdiction has approved the transfer if approval is necessary under the law of the other jurisdiction.

(2) If the court grants the petition under subsection (1), the court shall require the trustee to give a bond, if necessary under the law of the other jurisdiction or of this state, and may require bond as provided in [section 49].

NEW SECTION. **Section 202.** **Conditional order accepting transfer.** If appropriate to facilitate transfer of the trust property or the place of administration of a trust to this state, the court may issue a conditional order appointing a trustee to administer the trust in this state and indicating that transfer to this state will be accepted if transfer is approved by the proper court of the other jurisdiction.

NEW SECTION. **Section 203.** **Administration of transferred trust.** A trust transferred to this state pursuant to [sections 165 through 203] shall be administered

in the same manner as a trust of that type created in this state.

NEW SECTION. **Section 204.** **Personal liability of trustee to third persons on contracts.** (1) Unless otherwise provided in the contract or in [sections 165 through 203], a trustee is not personally liable on a contract properly entered into in the trustee's fiduciary capacity in the course of administration of the trust unless the trustee fails to reveal the trustee's representative capacity or identify the trust in the contract.

(2) The personal liability of a trustee on a contract entered into before October 1, 1989, is governed by prior law and not by this section.

NEW SECTION. **Section 205.** **Personal liability of trustee arising from ownership or control of trust estate.** A trustee is personally liable for obligations arising from ownership or control of trust property only if the trustee is personally at fault.

NEW SECTION. **Section 206.** **Personal liability of trustee for torts.** A trustee is personally liable for torts committed in the course of administration of the trust only if the trustee is personally at fault.

NEW SECTION. **Section 207.** **Liability of dissenting cotrustee to third persons.** (1) A cotrustee who does not join in exercising a power held by three or more cotrustees

is not liable to third persons for the consequences of the exercise of the power.

(2) A dissenting cotrustee who joins in an action at the direction of the majority cotrustees is not liable to third persons for the action if the dissenting cotrustee expresses the dissent in writing to any other cotrustee at or before the time the action is taken.

(3) This section does not excuse a cotrustee from liability for failure to discharge the cotrustee's duties as a trustee.

NEW SECTION. **Section 208. Assertion of claims against trust.** A claim based on a contract entered into by a trustee in the trustee's representative capacity, on an obligation arising from ownership or control of trust property, or on a tort committed in the course of administration of the trust may be asserted against the trust by proceeding against the trustee in the trustee's representative capacity, whether or not the trustee is personally liable on the claim.

NEW SECTION. **Section 209. Liability as between trustee and trust estate.** The question of liability as between the trust estate and the trustee personally may be determined in a proceeding under [section 179].

NEW SECTION. **Section 210. Protection of third person dealing with trustee.** With respect to a third person dealing with a trustee or assisting a trustee in the conduct of a

transaction, if the third person acts for a valuable consideration and without actual knowledge that the trustee is exceeding the trustee's powers or improperly exercising them:

(1) the third person is not bound to inquire whether the trustee has power to act or is properly exercising a power and may assume without inquiry the existence of a trust power and its proper exercise; and

(2) the third person is fully protected in dealing with or assisting the trustee just as if the trustee has and is properly exercising the power the trustee purports to exercise.

NEW SECTION. **Section 211. Application of property delivered to trustee by third person.** A third person is not bound to ensure the proper application of trust property paid or delivered to the trustee.

NEW SECTION. **Section 212. Protection of third person dealing with former trustee.** If a third person acting for a valuable consideration enters into a transaction with a former trustee without knowledge that the person is no longer a trustee, the third person is fully protected just as if the former trustee were still a trustee.

NEW SECTION. **Section 213. Effects on real property transactions.** (1) This section relates only to conveyances of real property to or from a trust, and supplements, but

does not modify other substantive provisions of [sections 1 through 215] relating to the creation or validity of trusts. This section does not affect conveyances recorded prior to October 1, 1989.

(2) Except as otherwise provided in [sections 1 through 215], a conveyance of real property to a trustee designated as such in the conveyance vests the whole estate conveyed in the trustee, subject only to the trustee's duties. The beneficiaries of the trust take no estate or interest in the real property, but may determine or enforce the terms of the trust as provided in [sections 1 through 215].

(3) An instrument creating or amending a trust need not be recorded, but may be if properly acknowledged.

(4) If there is no clear reference to or designation of a grantee as trustee in a conveyance (nor in a separately recorded instrument recorded in the same county as the conveyance and describing the same property as described in the conveyance), the conveyance shall be considered to be absolute to the grantee, in favor of purchasers or encumbrancers from the grantee, who were without actual knowledge and who acted for a valuable consideration, despite any valid trust which may exist.

(5) Unless limitations upon a trustee's power or authority are set forth in the recorded conveyance of real

property to the trustee or in a separate trust instrument (or portion thereof, or abstract thereof) recorded in the same county, there are no limitations upon the trustee's power or authority to convey or encumber the real property in favor of third persons who were without actual knowledge and who acted for a valuable consideration. A separate trust instrument incorporated by reference in a conveyance to a trustee cannot limit the trustee's power or authority to convey or encumber unless the limitations are set forth in the trust instrument (or portion thereof or abstract thereof) which is also recorded in the county where the real property is located. An amendment to a recorded trust instrument may not affect the power or authority of a trustee to convey or encumber unless it is also recorded in the same place.

(6) A subsequent conveyance from a person designated in the original conveyance as trustee (or from his successor trustee) conveys the whole estate vested in the trustee, except as limited by the terms of the conveyance. The identity of any successor trustee may be established by a recorded affidavit of the successor trustee specifying his name and address and the date and circumstances of his succession, and confirming that he is currently lawfully serving in such capacity.

(7) In an action or proceeding by a third person

involving the real property granted to a trustee, the person designated as trustee in the original conveyance, or the successor trustee as established in subsection (6), or, if none, the person then actually serving as trustee, or, if none, any beneficiary designated by the court to represent the interests of the beneficiaries, shall be considered the only necessary representative of the trust and of all persons with an interest therein. A judgment is binding upon and conclusive against the trust and all persons interested therein as to all matters finally adjudicated in the judgment.

NEW SECTION. **Section 214.** **Creditor's rights against revocable trust during trustor's lifetime.** If the trustor retains the power to revoke the trust in whole or in part, the trust property is subject to the claims of creditors of the trustor to the extent of the power of revocation during the lifetime of the trustor.

NEW SECTION. **Section 215.** **Creditor's rights against revocable trust after trustor's death.** Upon the death of a trustor who had retained the power to revoke the trust in whole or in part, the property that was subject to the power of revocation at the time of the trustor's death is subject to the claims of creditors of the decedent trustor's estate and to the expenses of administration of the estate to the extent that the decedent trustor's estate is inadequate to

satisfy those claims and expenses.

Section 216. Section 2-2-103, MCA, is amended to read:

"**2-2-103. Public trust.** (1) The holding of public office or employment is a public trust, created by the confidence which the electorate reposes in the integrity of public officers, legislators, and employees. A public officer, legislator, or employee shall carry out his duties for the benefit of the people of the state.

(2) A public officer, legislator, or employee whose conduct departs from his fiduciary duty is liable to the people of the state as a trustee of property, is liable to a beneficiary under ~~72-20-203(2)~~ [section 77], and shall suffer such other liabilities as a private fiduciary would suffer for abuse of his trust. The county attorney of the county where the trust is violated may bring appropriate judicial proceedings on behalf of the people. Any moneys collected in such actions shall be paid to the general fund of the aggrieved agency.

(3) The following sections set forth various rules of conduct, the transgression of any of which is, as such, a violation of fiduciary duty, and various ethical principles, the transgression of any of which is not, as such, a violation of fiduciary duty."

Section 217. Section 31-2-209, MCA, is amended to read:

"31-2-209. Assignment -- when void. An assignment for the benefit of creditors is void against any creditor of the assignor not assenting thereto in the following cases:

(1) if it gives a preference dependent upon any condition or contingency or with any power of revocation reserved;

(2) if it tends to coerce any creditor to release or compromise his demand;

(3) if it provides for the payment of any claim known by the assignor to be false or fraudulent or for the payment of more upon any claim than is known to be justly due from the assignor;

(4) if it reserves any interest in the assigned property or in any part thereof to the assignor or for his benefit, before all existing debts are paid;

(5) if it confers upon the assignee any power which, if exercised, might prevent or delay the immediate conversion of the assigned property to the purposes of the trust;

(6) if it exempts him from liability for neglect of duty or misconduct;

(7) if it violates ~~72-20-203(1)~~ [section 77]."

Section 218. Section 70-20-101, MCA, is amended to read:

"70-20-101. Transfer to be in writing -- statute of

frauds. No estate or interest in real property, other than an estate at will or for a term not exceeding 1 year, ~~or any trust or power concerning it or in any manner relating~~ thereto can be created, granted, assigned, surrendered, or declared otherwise than by operation of law or a conveyance or other instrument in writing, subscribed by the party creating, granting, assigning, surrendering, or declaring it or by his lawful agent thereunto authorized by writing."

Section 219. Section 82-1-304, MCA, is amended to read:

"82-1-304. Administration of the trust. (1) The administration of the trust shall comply with the appropriate provisions regulating trusts contained in Title 72.

(2) No trustee or attorney fees may be paid from the trust proceeds.

(3) All bonuses, rental payments, royalties, and other income shall be paid to the trustee until the trust is terminated and notice of its termination given to all interested parties. The trustee shall distribute all money held in the trust to the person or persons entitled to it upon the order of the district court.

(4) A trust in favor of unlocatable owners shall be in force until the unlocatable owners of the mineral interest in question have successfully claimed the share of funds

held in trust and filed the notice provided in 82-1-306.

(5) The trustee shall invest funds under his management in the manner of a prudent man, as ~~defined-in 72-21-104~~ provided in [section 89]. Fifty percent of the interest earned on each trust shall be credited to the general fund of the county in which the mineral interest is located to defray the costs of administration.

(6) Funds held in the trusts are subject to the provisions governing abandoned property contained in Title 70, chapter 9."

NEW SECTION. **Section 220.** Repealer. Sections 72-12-101 through 72-12-103, Title 72, chapters 20 through 25, sections 72-27-101 and 72-27-102, MCA, are repealed.

NEW SECTION. **Section 221.** Codification instruction. [Sections 1 through 215] are intended to be codified as an integral part of Title 72 and the provisions of Title 72 apply to [sections 1 through 215].

-End-

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dave Brown, on March 8, 1989, at 8:09 a.m.

ROLL CALL

Members Present: All members were present.

Members Excused: None.

Members Absent: None.

Staff Present: Julie Emge, Secretary
John MacMaster, Legislative Council

HEARING ON SENATE BILL 45

Presentation and Opening Statement by Sponsor:

Sen. Joe Mazurek, Senate District 23, stated SB 45 deletes Section 40-8-121 (4), MCA, relating to private adoption placements, enacted in 1983 which was based on a desire from the Department of Social and Rehabilitation Services (SRS) to get people to file petitions for adoption as quickly as possible after placement of a child is made with them. This subsection has created a problem in that although adoption agencies do preplacement investigations, postplacement investigations, and then send the necessary paperwork out for the adoption as quickly as possible, all of this may not occur within one year in accordance with the statute. Sen. Mazurek noted adoptive parents want the legal relationship established as quickly as possible, which is hopefully within the one-year provision. He indicated no penalty is provided for not doing so within one year. Concern has been expressed as to whether an adoption may be set aside if this requirement is not met. Sen. Mazurek felt this requirement was a trap for the unwary, was not self-enforcing, and potentially jeopardized an adoptive placement.

Testifying Proponents and Who They Represent:

None.

if it were a major problem, SRS would be present in full force, and, therefore, their absence seemed to indicate they had no problem with the deletion.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: The motion SB 45 BE CONCURRED IN CARRIED with Rep. Eudaily voting in opposition.

HEARING ON SENATE BILL 333

Presentation and Opening Statement by Sponsor:

Sen. Joe Mazurek, Senate District 23, stated SB 333 was a bill brought to the legislature by the State Bar of Montana Section on Tax and Probate. This bill is akin to the Code Commissioner bill, represents the efforts on behalf of committees of the State Bar of Montana, and deals with trusts and trustees. For the past three years, the State Bar Section on Tax and Probate has been working on modernizing the trust law which began being incorporated into our statutes prior to statehood. Sen. Mazurek indicated that as a result of a hundred years' action by the legislature, things don't mesh very well and many sections no longer apply. This bill is an effort to review the existing trust statutes, modernize the language, organize it better, eliminate some of the procedural problems, and eliminate some inconsistencies in the trust law. It's a complete rewrite of the trust statutes in the State of Montana.

Testifying Proponents and Who They Represent:

Professor E. Edwin Eck, University of Montana School of Law
Walter S. Murfitt, Helena Attorney
George Goodrich, Missoula Attorney
Howard Vralstad, Trust Division of the Montana Bankers Assoc.
Stewart Luen, Great Falls Attorney

Proponent Testimony:

Professor E. Edwin Eck, University of Montana School of Law, presented written testimony in support of SB 333 (EXHIBIT 1). Prof. Eck indicated the bill has been endorsed by both the State Bar and the Montana Bankers Association. He further indicated the bill began as a result of concern about inconsistencies in the trust statutes. In addition,

SB 333 eliminates some antiquated language, is better organized, eliminates procedural dissimilarities, and is comprehensive.

Walter S. Murfitt, Helena attorney, stood in support of SB 333. Mr. Murfitt was a member of the committee which proposed this law and indicated he felt it would be beneficial to his clients in that it resolves many questions frequently encountered in his profession.

George Goodrich, Missoula attorney, another member of the committee which proposed this legislation, also stood in support of SB 333. He indicated the committee members had been concerned about the sketchy state of existing Montana law and likened it to the Uniform Probate Code and Uniform Commercial Code which are working so well.

Howard Vralstad, representing the Trust Division of the Montana Bankers Association, stated the Montana Bankers Association wholeheartedly supports and endorses the legislation and urged its passage.

Stewart Luen, Great Falls lawyer, supported SB 333 in that it would be particularly valuable to his clients, mostly farmers and ranchers.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions from the Committee: Rep. Eudaily questioned the effective date provision in the bill. Sen. Mazurek explained this provision was more an applicability provision than an effective date, in that it states how these provisions will apply to existing trusts and trusts created after the effective date of this bill.

Rep. Hannah asked whether this bill allowed for trust companies to be based in other states than the state of Montana and still handle Montana trusts. Mr. Murfitt indicated that could not be done under this legislation or currently without this legislation. Rep. Hannah asked whether the trust companies then would have to stay in Montana, and Mr. Goodrich confirmed that statement. However, Mr. Goodrich indicated nothing would preclude an individual trustee from

moving out of state and still acting as trustee of an estate.

Rep. Hannah asked whether trustees can close trusts of less than $24,000. Prof. Eck responded that was true in that section 38 of the bill allows a court to determine when a trust is uneconomically low after giving notice to all beneficiaries or the trustee, unilaterally, if the amount is under $24,000, can make that decision without going to court. The trust property would then be distributed to the trust beneficiaries.

Rep. Mercer asked questioned the language about the trustee being liable only if the trustee is "personally" at fault. Prof. Eck indicated the sections were based upon provisions of the Uniform Probate Code which were not adopted when Montana adopted the probate code in 1974. Prof. Eck felt this codified what our courts probably would say if they had to face the issue. Mr. Goodrich went on to explain this is an effort to shield a trustee from in effect offering up his or her own assets to pay for the debts of the thing that person is managing or working on. Rep. Mercer asked what the difference was between being at fault and being personally at fault. Mr. Goodrich did not recall that was anything other than placement of words.

Closing Statement: Sen. Mazurek indicated that in addition to the committee's work, the efforts with regard to this bill had had widespread publicity in the State Bar of Montana's newsletter over the past year.

DISPOSITION OF SENATE BILL 333

Motion: Rep. Gould moved SB 333 BE CONCURRED IN, motion was seconded by Rep. Wyatt.

Discussion: None.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: Motion BE CONCURRED IN SB 333 CARRIED unanimously.

DAILY ROLL CALL

JUDICIARY COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date MARCH 8, 1989

NAME	PRESENT	ABSENT	EXCUSED
REP. KELLY ADDY, VICE-CHAIRMAN	X		
REP. OLE AAFEDT	X		
REP. WILLIAM BOHARSKI	X		
REP. VIVIAN BROOKE	X		
REP. FRITZ DAILY	X		
REP. PAULA DARKO	X		
REP. RALPH EUDAILY	X		
REP. BUDD GOULD	X		
REP. TOM HANNAH	X		
REP. ROGER KNAPP	X		
REP. MARY McDONOUGH	X		
REP. JOHN MERCER	X		
REP. LINDA NELSON	X		
REP. JIM RICE	X		
REP. JESSICA STICKNEY	X		
REP. BILL STRIZICH	X		
REP. DIANA WYATT	X		
REP. DAVE BROWN, CHAIRMAN	X		

EXHIBIT 1
DATE 3-8-89
SB 333

Professor E. Edwin Eck
University of Montana
School of Law

Rationale in Support of S.B. 333

Montana adopted a large part of its trust statutes from California in 1895. These California statutes in turn represent an 1872 version of the Field Code from the state of New York. For the most part, the Montana legislature has not amended these statutes during the 94 years since their adoption.

Additionally, the legislature has adopted various uniform acts which form another body of law to be read in conjunction with the Field Code. While those acts (see, for example, the Montana Uniform Trustees' Powers Act and the Revised Uniform Principal and Income Act) are excellent, provisions which are inconsistent still exist in the Field Code. Other inconsistencies are replete within the current trust law.

Much of Montana trust law is antiquated, especially that from the Field Code. For the most part, this antiquity is a matter of terminology. The Field Code simply does not use twentieth century English. Further, occasionally a current Montana trust statute takes a position contrary to modern trust law.

A simple listing of the chapters of Title 72 Mont. Code Ann. provides the reader with a good clue that our existing statutes are disorganized. Chapter 20 is entitled "Trusts in General" and Chapter 31 is entitled "Miscellaneous Provisions Relating to Fiduciaries." Between those chapters are located most of the provisions relating to trust law. Also sandwiched between chapters 20 and 31 are chapters which simply are not components of trust law, including the Uniform Transfers to Minors Act, codified as chapter 26, and chapter 30, dealing with the management of institutional endowment funds.

The current Montana trust statutes have not taken advantage of the work of the first or second Restatement of Trusts or of other jurisdictions' statutes. The proposed trust code codifies most of the relevant rules relating to modern trusts, making the law more accessible and understandable to the courts, lawyers, and other interested persons.

Many of the Montana statutes relating to trust law include different procedural provisions that are unnecessarily dissimilar. The proposed code unifies procedural rules.

The draft is well-organized, simplified, and comprehensive, and should serve Montana well into the 21st century. It eliminates inconsistencies and antiquated terms, clarifies administration, and is specific yet succinct. We urge your support of S.B. 333.

VISITORS' REGISTER

JUDICIARY COMMITTEE

BILL NO. SENATE BILL 333 DATE MARCH 8, 1989

SPONSOR SEN. MAZUREK

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
Kathleen Moore	U of M School of Law	✓	
[illegible]	Tax Section - State Bar	—	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

CS-33

STANDING COMMITTEE REPORT

March 8, 1989

Mr. Speaker: We, the committee on Judiciary report that SENATE BILL 333 (third reading copy -- blue) be concurred in .

Signed: _____
Dave Brown, Chairman

[REP. MERCER WILL CARRY THIS BILL ON THE HOUSE FLOOR]

COMMITTEE OF THE WHOLE AMENDMENT
SENATE BILL 333
Representative John Mercer

March 9, 1989 1:43 pm

Mr. Chairman: I move to amend SENATE BILL 333 (third reading copy -- blue).

Signed: MERCER
Representative John Mercer

And, that such amendments to SENATE BILL 333 read as follows:

1. Page 48, line 15.
Following: "NEW SECTION. Section 113.
Strike: "Investments" on page 48, line 15 through "obligations" on page 49, line 3
Insert: " If the personal representative is authorized to invest funds in United States obligations, he may invest in these obligations either directly or in the form of securities of or other interests in an open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940 (15 U.S.C. 80 a-1 through 80 a-64), as amended if:

(a) the portfolio of the investment company or investment trust is limited to United States government obligations and repurchase agreements fully collateralized by United States government obligations; and

(b) the investment company or investment trust takes delivery of the collateral for any repurchase agreement either directly or through an authorized custodian"

ADOPT

REJECT

HOUSE

551343CW.HBV

SB 333

SENATE BILL NO. 333

INTRODUCED BY MAZUREK, CRIPPEN, BISHOP

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAWS RELATING TO TRUSTS AND TRUSTEES; AMENDING SECTIONS 2-2-103, 31-2-209, 70-20-101, AND 82-1-304, MCA; AND REPEALING SECTIONS 72-12-101 THROUGH 72-12-103, TITLE 72, CHAPTERS 20 THROUGH 25, AND SECTIONS 72-27-101 AND 72-27-102, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title.** [Sections 1 through 215] shall be known and may be cited as the "Trust Code".

NEW SECTION. **Section 2. General rule concerning application of trust code.** Except as otherwise provided by statute:

(1) After September 30, 1989, [sections 1 through 215] apply to all trusts regardless of when they were created, unless in the opinion of the court, application of a particular provision of [sections 1 through 215] would substantially interfere with the rights of the parties and other interested persons, in which case the particular provision of [sections 1 through 215] does not apply and prior law applies.

(2) After September 30, 1989, [sections 1 through 215] apply to all proceedings concerning trusts whenever commenced, unless in the opinion of the court, application of a particular provision of [sections 1 through 215] would substantially interfere with the effective conduct of the proceedings or the rights of the parties and other interested persons, in which case the particular provision of [sections 1 through 215] does not apply and prior law applies.

NEW SECTION. **Section 3.** Common law as law of state. Except to the extent that the common law rules governing trusts are modified by statute, the common law as to trusts is the law of this state.

NEW SECTION. **Section 4. Constructive and resulting trusts not affected.** Other than [sections 19 through 23], nothing in [sections 1 through 215] affects the law relating to constructive or resulting trusts.

NEW SECTION. **Section 5. Application of code to charitable trusts.** Unless otherwise provided by statute, [sections 1 through 215] apply to charitable trusts that are subject to the jurisdiction of the attorney general.

NEW SECTION. **Section 6. Laws affecting construction and operation of wills apply to trusts.** (1) Title 72, chapter 2, part 5 and 72-3-901 apply to the construction and operation of trusts, except as provided in subsection (2).

(2) This section does not apply to any trust if its terms expressly or by necessary implication make this section inapplicable to it.

(3) For purposes of [sections 1 through 215], references in Title 72, chapter 2, part 5 and in 72-3-901 to a "testator" refer to the trustor, references to a "will" refer to a trust, references to a "devisee" refer to a trust beneficiary, and references to a "devise" refer to a trust distribution.

NEW SECTION. **Section 7.** Definitions. As used in [sections 1 through 215] unless the context requires otherwise the following definitions apply:

(1) "Beneficiary" means a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer and, as it relates to a charitable trust, includes any person entitled to enforce the trust.

(2) "Person" means an individual, a corporation, an organization, or other legal entity.

(3) "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.

(4) "Trust" when not qualified by the word "resulting" or "constructive", includes any express trust, private or charitable, with additions thereto, wherever and however

created. It also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. The term does not include conservatorships, personal representatives, custodial arrangements pursuant to chapter 26 of this title, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind and any arrangement under which a person is nominee or escrowee for another.

(5) "Trustee" means the person holding property in trust. The term includes an original, additional, or successor trustee, whether or not appointed or confirmed by a court.

(6) "Trustor" means the person who creates a trust.

(7) "Trust company" means an entity which has qualified to engage in and conduct a trust business in this state.

(8) "Trust property" means the property held in trust.

NEW SECTION. **Section 8.** Reference to statutes -- amendments and additions. Whenever a reference is made to any portion of [sections 1 through 215] or to any other law, the reference applies to all amendments and additions made.

NEW SECTION. **Section 9.** Methods of creating trust. Subject to other provisions of [sections 1 through 72], a trust may be created by any of the following methods:

(1) a declaration by the owner of property that the owner holds the property as trustee;

(2) a transfer of property by the owner during the owner's lifetime to another person as trustee;

(3) a testamentary transfer of property by the owner to another person as trustee;

(4) an exercise of a power of appointment to another person as trustee; or

(5) an enforceable promise to create a trust.

NEW SECTION. **Section 10.** Intention to create trust. A trust is created only if the trustor properly manifests an intention to create a trust.

NEW SECTION. **Section 11.** Trust property. (1) A trust is created only if there is trust property.

(2) The requirement of subsection (1) may be satisfied if the trust (or its trustee) is designated to be beneficiary of the proceeds of an insurance contract, an annuity contract, an employee benefit plan, an individual retirement account, or similar device, even though the designation may be revoked.

NEW SECTION. **Section 12.** Trust purpose. A trust may be created for any purpose that is not illegal or against

public policy.

NEW SECTION. **Section 13.** Trust for indefinite or general purposes. A trust created for an indefinite or general purpose is not invalid for that reason if it can be determined with reasonable certainty that a particular use of the trust property comes within that purpose.

NEW SECTION. **Section 14.** Designation of beneficiary. (1) A trust, other than a charitable trust, is created only if there is a beneficiary.

(2) The requirement of subsection (1) is satisfied if the trust instrument provides for either of the following:

(a) a beneficiary or class of beneficiaries that is ascertainable with reasonable certainty or that is sufficiently described so it can be determined that some person meets the description or is within the class; or

(b) a grant of power to the trustee or some other person to select the beneficiaries based on a standard or in the discretion of the trustee or other person.

NEW SECTION. **Section 15.** Designation of trust or trustee as beneficiary. (1) A trust or trustee may be designated as the beneficiary of the proceeds of an insurance contract, an annuity contract, an employee benefit plan, an individual retirement account, or similar device if the designation is made in accordance with the contract, plan, account, or device.

(2) Subsection (1) applies even though the trust or trustee is named or to be named by will or trust and whether or not the will or trust is in existence at the time of the designation.

NEW SECTION. **Section 16.** **Statute of frauds.** A trust is not valid unless evidenced by one of the following methods:

(1) by a written instrument signed by the trustee, or by the trustee's agent if authorized in writing to do so;

(2) by a written instrument signed by the trustor, or by the trustor's agent if authorized in writing to do so; or

(3) by operation of law.

NEW SECTION. **Section 17.** **Consideration.** Consideration is not required to create a trust, but a promise to create a trust in the future is enforceable only if the requirements for an enforceable contract are satisfied.

NEW SECTION. **Section 18.** **Exception to doctrine of merger.** If a trust provides for one or more successor beneficiaries after the death of the trustor, the trust is not invalid, merged, or terminated in either of the following circumstances:

(1) where there is one trustor who is the sole trustee and the sole beneficiary during the trustor's lifetime; or

(2) where there are two or more trustors, one or more of whom are trustees, and the beneficial interest in the

trust is in one or more of the trustors during the lifetime of the trustors.

NEW SECTION. **Section 19.** **Resulting trust upon failure of trust.** Where the owner of property gratuitously transfers it and manifests in the trust instrument an intention that the transferee should hold the property in trust but the trust fails, the transferee holds the trust estate as a resulting trust for the transferor or his estate, unless:

(1) the transferor manifested in the trust instrument an intention that no resulting trust should arise; or

(2) the intended trust fails for illegality and the policy against unjust enrichment of the transferee is outweighed by the policy against giving relief to a person who has entered into an illegal transaction.

NEW SECTION. **Section 20.** **Resulting trust upon full performance of trust.** Where the owner of property gratuitously transfers it subject to a trust which is properly declared and which is fully performed without exhausting the trust estate, the trustee holds the surplus as a resulting trust for the transferor or his estate, unless the transferor manifested in the trust instrument an intention that no resulting trust of the surplus should arise.

NEW SECTION. **Section 21.** **Purchase money resulting trust.** (1) Where a transfer of property is made to one

person and the purchase price is paid by another, a resulting trust arises in favor of the person who paid the purchase price.

(2) Subsection (1) does not apply in any of the following circumstances:

(a) whenever the party paying the purchase price manifests an intention that no resulting trust should arise;

(b) whenever the transferee is a spouse, child, or other natural object of the bounty of the person who paid the purchase price; or

(c) whenever the transfer is made in order to accomplish an illegal purpose and the policy against unjust enrichment of the transferee is outweighed by the policy against giving relief to a person who has entered into an illegal transaction.

(3) Subsection (2)(b) does not apply if the party paying the purchase price manifested an intention that the transferee should not have the beneficial interest in the property.

NEW SECTION. **Section 22.** Constructive trust. A constructive trust arises when a person holding title to property is subject to an equitable duty to convey it to another on the ground that the person holding title would be unjustly enriched if he were permitted to retain it.

NEW SECTION. **Section 23.** Resulting trusts,

constructive trusts -- statute of frauds. Resulting trusts and constructive trusts are considered to arise by operation of law and are valid under [section 16(3)].

NEW SECTION. **Section 24.** Restraint on transfer of income. Except as provided in [section 28], if the trust instrument provides that a beneficiary's interest is not subject to voluntary or involuntary transfer, the beneficiary's interest in income under the trust may not be transferred and is not subject to enforcement of a money judgment until paid to the beneficiary.

NEW SECTION. **Section 25.** Restraint on transfer of principal. (1) Except as provided in subsection (2) and in [section 28], if the trust instrument provides that a beneficiary's interest in principal is not subject to voluntary or involuntary transfer, the beneficiary's interest in principal may not be transferred and is not subject to enforcement of a money judgment until paid to the beneficiary.

(2) After an amount of principal has become due and payable to the beneficiary under the trust instrument, upon petition to the court by a judgment creditor, the court may make an order directing the trustee to satisfy the money judgment out of that principal amount. The court in its discretion may issue an order directing the trustee to satisfy all or part of the judgment out of that principal

amount.

NEW SECTION. **Section 26. Trust for support.** Except as provided in [section 28], if the trust instrument provides that the trustee shall pay income or principal or both for the education or support of a beneficiary, the beneficiary's interest in income or principal or both under the trust may not be transferred and is not subject to the enforcement of a money judgment until paid to the beneficiary.

NEW SECTION. **Section 27. Transferee or creditor cannot compel trustee to exercise discretion -- liability of trustee for payment to or for beneficiary.** (1) If the trust instrument provides that the trustee shall pay to or for the benefit of a beneficiary so much of the income or principal or both as the trustee in the trustee's discretion sees fit to pay, a transferee or creditor of the beneficiary may not compel the trustee to pay any amount that may be paid only in the exercise of the trustee's discretion.

(2) If the trustee has knowledge of the transfer of the beneficiary's interest or has been served with process by a judgment creditor seeking to reach the beneficiary's interest, and the trustee pays to or for the benefit of the beneficiary any part of the income or principal that may be paid only in the exercise of the trustee's discretion, the trustee is liable to the transferee or creditor to the extent that the payment to or for the benefit of the

beneficiary impairs the right of the transferee or creditor. This subsection does not apply if the beneficiary's interest in the trust is subject to a restraint on transfer that is valid under [section 24 or 25].

(3) This section applies regardless of whether the trust instrument provides a standard for the exercise of the trustee's discretion.

(4) Nothing in this section limits any right the beneficiary may have to compel the trustee to pay to or for the benefit of the beneficiary all or part of the income or principal.

NEW SECTION. **Section 28. Where trustor is beneficiary.** (1) If the trustor is a beneficiary of a trust created by the trustor and the trustor's interest is subject to a provision restraining the voluntary or involuntary transfer of the trustor's interest, the restraint is invalid against transferees or creditors of the trustor. The invalidity of the restraint on transfer does not affect the validity of the trust.

(2) If the trustor is the beneficiary of a trust created by the trustor and the trust instrument provides that the trustee shall pay income or principal or both for the education or support of the beneficiary or gives the trustee the discretion to determine the amount of income or principal or both to be paid to or for the benefit of the

trustor, a transferee or creditor of the trustor may reach the maximum amount that the trustee could pay to or for the benefit of the trustor under the trust instrument, not exceeding the amount of the trustor's proportionate contribution to the trust.

NEW SECTION. **Section 29. Disclaimer not a transfer.** A disclaimer or renunciation by a beneficiary of all or part of his interest under a trust shall not be considered a transfer under [section 24 or 25].

NEW SECTION. **Section 30. Presumption of revocability.** Unless a trust is expressly made irrevocable by the trust instrument, the trust is revocable by the trustor. This section applies only where the trustor is domiciled in this state when the trust is created, where the trust instrument is executed in this state, or where the trust instrument provides that the law of this state governs the trust.

NEW SECTION. **Section 31. Method of revocation by trustor.** (1) A trust that is revocable by the trustor may be revoked in whole or in part by any of the following methods:

(a) by compliance with any method of revocation provided in the trust instrument; or

(b) by a writing (other than a will) signed by the trustor and delivered to the trustee during the lifetime of the trustor. If the trust instrument explicitly makes the method of revocation provided in the trust instrument the

exclusive method of revocation, the trust may not be revoked pursuant to this subsection.

(2) A trust may not be revoked by an attorney-in-fact under a power of attorney unless it is expressly permitted by the trust instrument.

(3) Nothing in this section limits the authority to modify or terminate a trust pursuant to [section 33 or 34] in an appropriate case.

(4) The manner of revocation of a trust revocable by the trustor that was created by an instrument executed before October 1, 1989, is governed by prior law and not by this section.

NEW SECTION. **Section 32. Power to revoke includes power to modify.** Unless the trust instrument provides otherwise, if a trust is revocable by the trustor, the trustor may modify the trust by the procedure for revocation.

NEW SECTION. **Section 33. Modification or termination of irrevocable trust by all beneficiaries.** (1) Except as provided in subsection (2), if all beneficiaries of an irrevocable trust consent, they may compel modification or termination of the trust upon petition to the court.

(2) If the continuance of the trust is necessary to carry out a material purpose of the trust, the trust cannot be modified or terminated unless the court, in its

discretion, determines that the reason for doing so under the circumstances outweighs the interest in accomplishing a material purpose of the trust. Under this section the court does not have discretion to permit termination of a trust that is subject to a valid restraint on transfer of the beneficiary's interest as provided in [sections 24 through 29].

NEW SECTION. **Section 34. Modification or termination by trustor and all beneficiaries.** (1) If the trustor and all beneficiaries of a trust consent, they may compel the modification or termination of the trust.

(2) If any beneficiary does not consent to the modification or termination of the trust, upon petition to the court, the other beneficiaries, with the consent of the trustor, may compel a modification or a partial termination of the trust if the interests of the beneficiaries who do not consent are not substantially impaired.

(3) If the trust provides for the disposition of principal to a class of persons described only as "heirs" or "next of kin" of the trustor, or using other words that describe the class of all persons who would take under the rules of intestacy, the court may limit the class of beneficiaries whose consent is needed to compel the modification or termination of the trust to the beneficiaries who are reasonably likely to take under the

circumstances.

NEW SECTION. **Section 35. Guardian ad litem.** For the purposes of [sections 33 and 34], the consent of a beneficiary who is legally incapacitated, unascertained, or unborn may be given in proceedings before the court by a guardian ad litem, if it would be appropriate to do so. In this case the guardian ad litem may rely on general family benefit accruing to living members of the beneficiary's family as a basis for approving a modification or termination of the trust.

NEW SECTION. **Section 36. No conclusive presumption of fertility.** In determining the class of beneficiaries whose consent is necessary to modify or terminate a trust pursuant to [section 33 or 34], the presumption of fertility is rebuttable.

NEW SECTION. **Section 37. Termination of trusts -- trustee's powers on termination.** (1) A trust terminates when any of the following occurs:

(a) the term of the trust expires;

(b) the trust purpose is fulfilled;

(c) the trust purpose becomes unlawful;

(d) the trust purpose becomes impossible to fulfill; or

(e) the trust is revoked.

(2) On termination of the trust, the trustee continues

to have the powers reasonably necessary under the circumstances to wind up the affairs of the trust.

NEW SECTION. **Section 38. Trust with uneconomically low principal.** (1) On petition by a trustee or beneficiary, if the court determines that the fair market value of the principal of a trust has become so low in relation to the cost of administration that continuation of the trust under its existing terms will defeat or substantially impair the accomplishment of its purposes, the court may, in its discretion and in a manner that conforms as nearly as possible to the intention of the trustor, order any of the following:

(a) termination of the trust;

(b) modification of the trust; or

(c) appointment of a new trustee.

(2) Notwithstanding subsection (1), if the trust principal does not exceed $20,000 in value, the trustee has the power to terminate the trust.

(3) The existence of a trust provision restraining transfer of the beneficiary's interest does not prevent application of this section.

NEW SECTION. **Section 39. Modification or termination.** (1) On petition by a trustee or beneficiary, the court may modify the administrative or dispositive provisions of the trust or terminate the trust if the continuation of the

trust under its terms would defeat or substantially impair the accomplishment of the purposes of the trust, whether by the imposition of tax, the allocation of beneficial interest inconsistent with such purposes, or by other reason. In this case, if necessary to carry out the purposes of the trust, the court may order the trustee to do acts that are not authorized or are forbidden by the trust instrument.

(2) The court shall consider a trust provision restraining transfer of the beneficiary's interest as a factor in making its decision whether to modify or terminate the trust, but the court is not precluded from exercising its discretion to modify or terminate the trust solely because of a restraint on transfer.

NEW SECTION. **Section 40. Disposition of property upon termination.** At the termination of a trust, the trust property shall be disposed of as follows:

(1) In the case of a trust that is revoked by the trustor, as directed by the trustor.

(2) In the case of a trust that is terminated by the consent of the trustor and all beneficiaries, as agreed by the trustor and all beneficiaries.

(3) In any other case, as provided in the trust instrument or in a manner directed by the court that conforms as nearly as possible to the intention of the trustor as expressed in the trust instrument. If a trust is

terminated by the trustee pursuant to [section 38(2)], the trust property shall be distributed as determined by the trustee pursuant to this subsection.

NEW SECTION. **Section 41.** Combination of similar trusts. If the terms of two or more trusts are substantially similar, on petition by a trustee or beneficiary, the court, for good cause shown, may combine the trusts if the court determines that administration as a single trust will not defeat or substantially impair the accomplishment of the trust purposes or the interests of the beneficiaries.

NEW SECTION. **Section 42.** Division of trusts. On petition by a trustee or beneficiary, the court, for good cause shown, may divide a trust into two or more separate trusts, if the court determines that dividing the trust will not defeat or substantially impair the accomplishment of the trust purposes or the interests of the beneficiaries.

NEW SECTION. **Section 43.** Charitable trust. A charitable trust, or the charitable portion of a trust, subjects the trustee to equitable duties to deal with the trust property for a charitable purpose.

NEW SECTION. **Section 44.** Charitable purposes. Charitable purposes include:

(1) the relief of poverty;

(2) the advancement of education;

(3) the advancement of religion;

(4) the promotion of health;

(5) governmental or municipal purposes; or

(6) other purposes the accomplishment of which are beneficial to the community.

NEW SECTION. **Section 45.** Enforcement of a charitable trust. The attorney general, a cotrustee, or a person who has a special interest in the enforcement of the charitable trust can maintain a suit for the enforcement of a charitable trust, but not persons who have no special interest or the trustor or his heirs or personal representative.

NEW SECTION. **Section 46.** Cy pres doctrine. If property is given in trust to be applied to a particular charitable purpose, and it is or becomes impossible, impracticable, or illegal to carry out the particular purpose, and if the trustor manifested a general intention to devote the property to charitable purposes, the trust need not fail. The court may direct the application of the property to some charitable purpose which falls within the general charitable intention of the trustor.

NEW SECTION. **Section 47.** Acceptance of trust by trustee. (1) The person named as trustee may accept the trust, or a modification of the trust, by one of the following methods:

(a) signing the trust instrument or the trust

instrument as modified, or signing a separate written acceptance; or

(b) knowingly exercising powers or performing duties under the trust instrument or the trust instrument as modified, except as provided in subsection (2).

(2) In a case where there is an immediate risk of damage to the trust property, the person named as trustee may act to preserve the trust property without accepting the trust or a modification of the trust, if within reasonable time after acting the person delivers a written rejection of the trust or the modification of the trust to the trustor or, if the trustor is dead or incompetent, to a beneficiary. This subsection does not impose a duty on the person named as trustee to act.

NEW SECTION. **Section 48.** **Rejection of trust -- nonliability of person who rejects trust.** (1) A person named as trustee may in writing reject the trust or a modification of the trust.

(2) If the person named as trustee does not accept the trust or a modification of the trust by a method provided in [section 47(1)] within a reasonable time after learning of being named as trustee or of the modification, the person has rejected the trust or the modification.

(3) A person named as trustee who rejects the trust or a modification of the trust is not liable with respect to

the rejected trust or modification.

NEW SECTION. **Section 49.** **Trustee's bond.** (1) A trustee is not required to give a bond to secure performance of the trustee's duties, unless either of the following circumstances ~~occur~~ OCCURS:

(a) A bond is required by the trust instrument.

(b) Notwithstanding a waiver of bond in the trust instrument, a bond is found by the court to be necessary to protect the interests of beneficiaries.

(2) Notwithstanding subsection (1)(a), the court may excuse a requirement of a bond, reduce or increase the amount of a bond, release a surety, permit the substitution of another bond with the same or different sureties, or accept another form of security.

(3) If a bond is required, it shall be filed or served, in the amount, and with sureties and liabilities as provided in the trust instrument or as ordered by the court.

(4) Except as otherwise provided in the trust instrument or ordered by the court, the cost of the bond shall be charged against the trust.

(5) A trust company may not be required to give a bond, notwithstanding a contrary provision in the trust instrument.

NEW SECTION. **Section 50.** **Certificate of trustee.** On application by the trustee, the clerk of the district court

shall issue a certificate that the trustee is a duly appointed and acting trustee under the trust if the court file shows the incumbency of the trustee.

NEW SECTION. **Section 51.** **Cotrustees.** (1) Unless otherwise provided in the trust instrument, a power vested in two trustees may only be exercised by their unanimous action.

(2) Unless otherwise provided in the trust instrument, a power vested in three or more trustees may be exercised by a majority of such trustees.

NEW SECTION. **Section 52.** **Vacancy in office of cotrustee.** Unless otherwise provided in the trust instrument, if a vacancy occurs in the office of a cotrustee, the remaining cotrustee or cotrustees may act for the trust as if they are the only trustees.

NEW SECTION. **Section 53.** **Temporary incapacity of cotrustee.** Unless otherwise provided in the trust instrument, if a cotrustee is unavailable to perform the duties of the cotrustee because of absence, illness, or other temporary incapacity, the remaining cotrustee or cotrustees may act for the trust when necessary to accomplish the purposes of the trust or to avoid irreparable injury to the trust property as if they are the only trustees.

NEW SECTION. **Section 54.** **Resignation of the trustee.**

(1) A trustee who has accepted the trust may resign only by one of the following methods:

(a) as provided in the trust instrument;

(b) in the case of a revocable trust, with the consent of the person holding the power to revoke the trust;

(c) in the case of a trust that is not revocable, with the consent of only all of the adult beneficiaries who are receiving or are entitled to receive income under the trust or to receive a distribution of principal if the trust were terminated at the time consent is sought; or

(d) pursuant to a court order obtained as provided in subsection (2).

(2) On petition by the trustee, the court shall accept the trustee's resignation. The court may also make any orders necessary for the preservation of the trust property, including the appointment of a receiver or a temporary trustee.

NEW SECTION. **Section 55.** **Liability upon resignation.** The liability for acts or omissions of a resigning trustee or of the sureties on the trustee's bond, if any, is not released or affected in any manner by the trustee's resignation.

NEW SECTION. **Section 56.** **Removal of a trustee.** (1) A trustee may be removed in accordance with the trust instrument or by the court on its own motion or on petition

of a cotrustee or beneficiary.

(2) The grounds for removal of a trustee by the court include the following:

(a) if the trustee has committed a breach of the trust;

(b) if the trustee is insolvent or otherwise unfit to administer the trust;

(c) if hostility or lack of cooperation among cotrustees impairs the administration of the trust;

(d) if the trustee fails or declines to act; or

(e) for other good cause.

(3) If it appears to the court that trust property or the interests of a beneficiary may suffer loss or injury pending a decision on a petition for removal of a trustee and any appellate review, the court may, on its own motion or on petition of a cotrustee or beneficiary, compel the trustee whose removal is sought to surrender trust property to a cotrustee or to a receiver or temporary trustee. The court may also suspend the powers of the trustee to the extent the court considers necessary.

NEW SECTION. **Section 57.** **Vacancy in office of trustee.** There is a vacancy in the office of trustee in any of the following circumstances:

(1) The person named as trustee rejects the trust.

(2) The person named as trustee cannot be identified

or does not exist.

(3) The trustee resigns or is removed.

(4) The trustee dies.

(5) A conservator or guardian of an individual trustee is appointed.

(6) A certificate of incorporation of a trust company is revoked or its powers are suspended, if the revocation or suspension is to be in effect for a period of 30 days or more.

(7) A receiver is appointed for a trust company if the appointment is not vacated within a period of 30 days.

NEW SECTION. **Section 58.** **Delivery of property by former trustee upon occurrence of vacancy.** When a vacancy has occurred in the office of trustee, the former trustee who holds property of the trust shall deliver the trust property to the successor trustee or a person appointed by the court to receive the property and remains responsible for the trust property until it is delivered. A trustee who has resigned or is removed has the powers reasonably necessary under the circumstances to preserve the trust property until it is delivered to the successor trustee and to perform actions necessary to complete the resigning or removed trustee's administration of the trust.

NEW SECTION. **Section 59.** **Appointment of trustee to fill vacancy.** (1) If the trust has no trustee or if the

trust instrument requires a vacancy in the office of a cotrustee to be filled, the vacancy shall be filled as provided in this section.

(2) If the trust instrument provides a practical method of appointing a trustee or names the person to fill the vacancy, the vacancy shall be filled as provided in the trust instrument.

(3) If the vacancy in the office of trustee is not filled as provided in subsection (2), on petition of a cotrustee or beneficiary the court may, in its discretion, appoint a trustee to fill the vacancy. If the trust provides for more than one trustee, the court may, in its discretion, appoint the original number or any lesser number of trustees. In selecting a trustee, the court shall give consideration to the wishes of the beneficiaries who are 14 years of age or older.

NEW SECTION. **Section 60.** **Capacity of trustee.** (1) The trustee must have the legal capacity to take, hold, and transfer the trust property. The trustee may be a natural person or a corporation or trust company. If the trustee is a corporation, it must be qualified to act as a trustee in this state.

(2) A beneficiary of a trust may be the trustee of the trust.

(3) The trustor of a trust may be the trustee of the

trust.

NEW SECTION. **Section 61.** **Trustee's compensation as provided in trust instrument -- different compensation.** (1) Subject to subsection (2), if the trust instrument provides for the trustee's compensation, the trustee is entitled to be compensated in accordance with the trust instrument.

(2) Upon proper showing, the court may fix or allow greater or lesser compensation than could be allowed under the terms of the trust in any of the following circumstances:

(a) whenever the duties of the trustee are substantially different from those contemplated when the trust was created;

(b) whenever the compensation in accordance with the terms of the trust would be inequitable or unreasonably low or high; or

(c) in extraordinary circumstances calling for equitable relief.

(3) An order fixing or allowing greater or lesser compensation under subsection (2) applies only prospectively to actions taken in administration of the trust after the order is made.

NEW SECTION. **Section 62.** **Trustee's compensation where trust silent.** If the trust instrument does not specify the trustee's compensation, the trustee is entitled to

reasonable compensation.

NEW SECTION. **Section 63. Compensation for services rendered in making temporary investments.** In addition to other compensation to which the trustee is entitled, the trustee is entitled to make a reasonable charge for services rendered in making temporary investments.

NEW SECTION. **Section 64. Court determination of prospective compensation.** The court may fix an amount of periodic compensation under [sections 61 and 62] to continue for as long as the court determines is proper.

NEW SECTION. **Section 65. Compensation of cotrustees.** Unless the trust instrument otherwise provides or the trustees otherwise agree, if the trust has two or more trustees, the compensation shall be apportioned among the cotrustees according to the services rendered by them.

NEW SECTION. **Section 66. Repayment of trustee for expenditures.** A trustee is entitled to the repayment out of the trust property for the following:

(1) expenditures that were properly incurred in the administration of the trust; and

(2) to the extent that they benefited the trust, expenditures that were not properly incurred in the administration of the trust.

NEW SECTION. **Section 67. Trustee's lien.** The trustee has an equitable lien on the trust property as against the

beneficiary in the amount of advances, with any interest, made for the protection of the trust, and for expenses, losses, and liabilities sustained in the administration of the trust or because of ownership or control of any trust property.

NEW SECTION. **Section 68. Limits on rights of beneficiary of revocable trust.** Except to the extent that the trust instrument otherwise provides or where the joint action of the trustor and all beneficiaries is required, during the time that a trust is revocable and the person holding the power to revoke the trust is competent:

(1) The person holding the power to revoke, and not the beneficiary, has the rights afforded beneficiaries under [sections 1 through 215].

(2) The duties of the trustee are owed to the person holding the power to revoke.

NEW SECTION. **Section 69. Consent by beneficiary of revocable trust.** (1) In any case where the consent of a beneficiary may be given or is required to be given before an action may be taken, during the time that a trust is revocable and the person holding the power to revoke the trust is competent, the person holding the power to revoke, and not the beneficiary, has the power to consent or withhold consent.

(2) This section does not apply where the joint

consent of the trustor and all beneficiaries is required by statute.

NEW SECTION. **Section 70. Notice to beneficiary of revocable trust.** Notwithstanding any other statute, during the time that a trust is revocable and the person holding the power to revoke the trust is competent, a notice that is to be given to a beneficiary shall be given to the person holding the power to revoke and not to the beneficiary.

NEW SECTION. **Section 71. Rights of holder of power of appointment or withdrawal.** The holder of a presently exercisable general power of appointment or power to withdraw property from the trust has the rights of a trustor provided by [sections 68 through 70], inclusive, to the extent of the holder's power over the trust property.

NEW SECTION. **Section 72. Notice in case involving future interest of beneficiary.** (1) Subject to subsections (2) and (3), it is sufficient compliance with a requirement in [sections 1 through 215] that notice be given to a beneficiary, or to a person interested in the trust, if notice is given as follows:

(a) Whenever an interest has been limited on any future contingency to persons who will compose a certain class upon the happening of a certain event without further limitation, notice shall be given to the persons in being who would constitute the class if the event had happened

immediately before the commencement of the proceedings.

(b) Whenever an interest has been limited to a living person and the same interest, or a share therein, has been further limited upon the happening of a future event to the surviving spouse or to persons who are or may be the distributees, heirs, issue, or other kindred of the living persons, notice shall be given to the living person.

(c) Whenever an interest has been limited upon the happening of any future event to a person, or a class of persons, or both, and the interest, or a share of the interest, has been further limited upon the happening of an additional future event to another person, or a class of persons, or both, notice shall be given to the person or persons in being who would take the interest upon the happening of the first of these events.

(2) If a conflict of interest involving the subject matter of the trust proceeding exists between a person to whom notice is required to be given and a person to whom notice is not otherwise required to be given under subsection (1), notice shall also be given to persons not otherwise entitled to notice under subsection (1) with respect to whom the conflict of interest exists.

(3) Nothing in this section affects any of the following:

(a) requirements for notice to:

(i) a person who has requested special notice;

(ii) a person who has filed notice of appearance; or

(iii) a particular person or entity required by statute to be given notice.

(b) Availability of a guardian ad litem pursuant to [section 187].

NEW SECTION. **Section 73. Duty to administer trust.** On acceptance of the trust, the trustee has a duty to administer the trust according to the trust instrument and, except to the extent the trust instrument provides otherwise, according to [sections 1 through 215].

NEW SECTION. **Section 74. Duties of trustee of revocable trust.** (1) Except as provided in subsection (2), the trustee of a revocable trust shall follow any written direction acceptable to the trustee given from time to time:

(a) by the person then having the power to revoke the trust or the part thereof with respect to which the direction is given; or

(b) by the person to whom the trustor delegates the right to direct the trustee.

(2) If a written direction given under subsection (1) would have the effect of modifying the trust, the trustee has no duty to follow the direction unless it complies with the requirements for modifying the trust.

NEW SECTION. **Section 75. Duty of loyalty.** (1) The

trustee has a duty to administer the trust solely in the interest of the beneficiaries.

(2) It is not a violation of the duty provided in subsection (1) for a trustee who administers two trusts to sell, exchange, or participate in the sale or exchange of trust property between the trusts, if both of the following requirements are met:

(a) the sale or exchange is fair and reasonable with respect to the beneficiaries of both trusts; and

(b) the trustee gives to the beneficiaries of both trusts notice of all material facts related to the sale or exchange that the trustee knows or should know.

NEW SECTION. **Section 76. Duty to deal impartially with beneficiaries.** If a trust has two or more beneficiaries, the trustee has a duty to deal impartially with them.

NEW SECTION. **Section 77. Duty to avoid conflict of interest.** (1) The trustee has a duty not to use or deal with trust property for the trustee's own profit or for any other purpose unconnected with the trust, nor to take part in any transaction in which the trustee has an interest adverse to the beneficiary.

(2) The trustee may not enforce any claim against the trust property that the trustee purchased after or in contemplation of appointment as trustee, but the court may

allow the trustee to be reimbursed from trust property the amount that the trustee paid for the claim.

(3) A transaction between the trustee and a beneficiary which occurs during the existence of the trust or while the trustee's influence with the beneficiary remains and by which the trustee obtains an advantage from the beneficiary is presumed to be a violation of the trustee's fiduciary duties. This presumption is a presumption affecting the burden of proof. This subsection does not apply to the provisions of an agreement between a trustee and a beneficiary relating to the hiring or compensation of the trustee.

NEW SECTION. **Section 78. Duty not to undertake adverse trust.** The trustee of one trust has a duty not to knowingly become a trustee of another trust adverse in its nature to the interest of the beneficiary of the first trust, and a duty to eliminate the conflict or resign as trustee when the conflict is discovered.

NEW SECTION. **Section 79. Duty to take control of and preserve trust property.** The trustee has a duty to take reasonable steps under the circumstances to take and keep control of and to preserve the trust property.

NEW SECTION. **Section 80. Duty to make trust property productive.** The trustee has a duty to make the trust property productive under the circumstances and in

furtherance of the purposes of the trust.

NEW SECTION. **Section 81. Duty to dispose of improper investments.** (1) Except as provided in subsection (2), the trustee has a duty within a reasonable time to dispose of any part of the trust property included in the trust at the time of its creation, or later acquired by or added to the trust, that would not be a proper investment for the trustee to make.

(2) Unless the trust instrument expressly provides otherwise, the trustee may, without liability, continue to hold property included in the trust at its creation or later added to the trust or acquired pursuant to proper authority, if retention is in the best interests of the trust or in furtherance of the purposes of the trust.

NEW SECTION. **Section 82. Duty to keep trust property separate and identified.** The trustee has a duty to do the following:

(1) to keep the trust property separate from other property not subject to the trust; and

(2) to see that the trust property is designated as property of the trust.

NEW SECTION. **Section 83. Duty to enforce claims.** The trustee has a duty to take reasonable steps to enforce claims that are part of the trust property.

NEW SECTION. **Section 84. Duty to defend actions.** The

trustee has a duty to take reasonable steps to defend actions that may result in a loss to the trust.

NEW SECTION. **Section 85. Duty not to delegate.** (1) The trustee has a duty not to delegate to others the performance of acts that the trustee can reasonably be required personally to perform and may not transfer the office of trustee to another person nor delegate the entire administration of the trust to a cotrustee or other person.

(2) In a case where a trustee has properly delegated a matter to an agent, cotrustee, or other person, the trustee has a duty to exercise general supervision over the person performing the delegated matter.

NEW SECTION. **Section 86. Duty with respect to cotrustees.** If a trust has more than one trustee, each trustee has a duty to do the following:

(1) to participate in the administration of the trust; and

(2) to take reasonable steps to prevent a cotrustee from committing a breach of trust or to compel a cotrustee to redress a breach of trust.

NEW SECTION. **Section 87. Duty to use special skills.** (1) The trustee has a duty to apply the full extent of the trustee's skills.

(2) If the trustor, in selecting the trustee, has relied on the trustee's representation of having special

skills, the trustee is held to the standard of the skills represented.

NEW SECTION. **Section 88. Certain actions not violations of duties.** The provision of services for compensation by a regulated financial institution or its affiliates in the ordinary course of business either to a trust of which it also acts as trustee or to a person dealing with the trust is not a violation of the duty provided in [section 75 or 77]. For the purposes of this section, "affiliate" means a corporation that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with another domestic or foreign corporation.

NEW SECTION. **Section 89. Duty to use ordinary skill and prudence.** (1) The trustee shall administer the trust with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person would use to accomplish the purposes of the trust as determined from the trust instrument.

(2) When investing, reinvesting, purchasing, acquiring, exchanging, selling, and managing trust property, the trustee shall act with the care, skill, prudence, and diligence under the circumstances then prevailing, including but not limited to the general economic conditions and the anticipated needs of the trust and its beneficiaries, that a

prudent person would use to accomplish the purposes of the trust as determined from the trust instrument. In the course of administering the trust pursuant to this standard, individual investments shall be considered as part of an overall investment strategy.

(3) The trustor may expand or restrict the standards provided in subsections (1) and (2) by express provisions in the trust instrument. A trustee is not liable to a beneficiary for the trustee's reliance on these express provisions.

NEW SECTION. **Section 90. Standard of care not affected by compensation.** A trustee's standard of care and performance in administering the trust is not affected by whether or not the trustee receives any compensation.

NEW SECTION. **Section 91. Interpretation of trust terms concerning legal investments.** If a trust created before, on, or after October 1, 1989, refers to "investments permissible by law for investment of trust funds", "authorized by law for investment of trust funds", "legal investments", "authorized investments", or "investments acquired using the judgment and care which men of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income, as well as the probable

safety of their capital", or uses other words of similar meaning in defining the powers of the trustee relative to investments, such language, in the absence of other controlling or modifying provisions of the trust instrument, shall be construed as imposing the standard of care provided by [section 89] and authorizing any investment permitted under [sections 105 through 137].

NEW SECTION. **Section 92. Trustee's general duty to report information to beneficiaries.** The trustee has a duty to keep the beneficiaries of the trust reasonably informed of the trust and its administration.

NEW SECTION. **Section 93. Duty to report information about trust on request.** Except as provided in [section 95], on reasonable request by a beneficiary, the trustee shall provide the beneficiary with a report of information about the assets, liabilities, receipts, and disbursements of the trust, the acts of the trustee, and the particulars relating to the administration of the trust relevant to the beneficiary's interest, including the terms of the trust that describe or affect the beneficiary's interest.

NEW SECTION. **Section 94. Duty to provide annual statement to income beneficiaries.** Except as provided in [section 95], the trustee shall annually mail each income beneficiary an itemized statement of all current receipts and disbursements of both principal and income.

NEW SECTION. **Section 95. Exceptions to duty to report information and to provide annual statement.** The trustee is not required to report information or to provide an annual statement to a beneficiary in any of the following circumstances:

(1) to the extent the trust instrument waives the report or annual statement;

(2) in the case of a beneficiary of a revocable trust, as provided in [section 68].

(3) as to a beneficiary who has waived in writing the right to a report or annual statement. A waiver of rights under this subsection may be withdrawn in writing at any time as to the most recent annual statement or future annual statements. A waiver has no effect of the beneficiary's right to petition for a report, statement, or account pursuant to [section 179]; or

(4) if the beneficiary and the trustee are the same person.

NEW SECTION. **Section 96. Permissive accounts.** At any time during the term of the trust or upon the termination of the trust, the trustee may mail an account to trust beneficiaries. To effectively bar a beneficiary from an action against the trustee pursuant to [section 159], the account must contain the following information:

(1) a statement of receipts and disbursements of

principal and income that have occurred since the last account;

(2) a statement of the assets and liabilities of the trust since the last account;

(3) the trustee's compensation since the last account;

(4) the agents hired by the trustee, their relationship to the trustee, if any, and their compensation since the last account;

(5) a statement that the recipient of the account may petition the court pursuant to [section 179] to obtain a court review of the account and of the acts of the trustee; and

(6) a statement that claims against the trustee for breach of trust may not be made after the expiration of 3 years from the date the beneficiary receives an account disclosing facts giving rise to the claim.

NEW SECTION. **Section 97. Discretionary powers to be exercised reasonably.** Except as provided in [section 98], a discretionary power conferred upon a trustee is not left to the trustee's arbitrary discretion, but shall be exercised reasonably.

NEW SECTION. **Section 98. Standard for exercise of "absolute", "sole", or "uncontrolled" powers.** (1) Subject to the additional requirements of subsection (2), if a trust instrument confers "absolute", "sole", or "uncontrolled"

discretion on a trustee, the trustee shall act in accordance with fiduciary principles and may not act in disregard of the purposes of the trust.

(2) Notwithstanding the trustor's use of terms like "absolute", "sole", or "uncontrolled", a person who is a beneficiary of a trust and who, either individually or as trustee or cotrustee, holds a power to take or distribute income or principal to or for the benefit of himself or herself pursuant to a standard, shall exercise that power reasonably and in accordance with the standard. In any case in which the standard governing the exercise of the power does not clearly indicate that a broader power is intended, the holder of the power may exercise it in his or her favor only for his or her health, education, support, or maintenance.

NEW SECTION. **Section 99.** **Definitions.** As used in [sections 99 through 104], the following definitions apply:

(1) "Charitable trust" means a charitable trust as described in section 4947(a)(1) of the Internal Revenue Code.

(2) "Private foundation" means a private foundation as defined in section 509 of the Internal Revenue Code.

(3) "Split-interest trust" means a split-interest trust as described in section 4947(a)(2) of the Internal Revenue Code.

NEW SECTION. **Section 100.** **Distribution under charitable trust or private foundation.** During any period when a trust is considered to be a charitable trust or a private foundation, the trustee shall distribute its income for each taxable year (and principal if necessary) at a time and in a manner that will not subject the property of the trust to tax under section 4942 of the Internal Revenue Code.

NEW SECTION. **Section 101.** **Restrictions on trustees under charitable trust, private foundations, or split-interest trust.** During any period when a trust is considered to be a charitable trust, a private foundation, or a split-interest trust, the trustee may not do any of the following:

(1) engage in any act of self-dealing as defined in section 4941(d) of the Internal Revenue Code;

(2) retain any excess business holdings as defined in section 4943(c) of the Internal Revenue Code;

(3) make any investments in such manner as to subject the property of the trust to tax under section 4944 of the Internal Revenue Code; or

(4) make any taxable expenditure as defined in section 4945(d) of the Internal Revenue Code.

NEW SECTION. **Section 102.** **Exceptions applicable to split-interest trusts.** With respect to split-interest

trusts:

(1) [Subsections (2) and (3) of section 101] do not apply to any trust described in section 4947(b)(3) of the Internal Revenue Code.

(2) [Section 101] does not apply with respect to any of the following:

(a) any amounts payable under the terms of such trust to income beneficiaries, unless a deduction was allowed under section 170(f)(2)(B), 2055(e)(2)(B), or 2522(c)(2)(B) of the Internal Revenue Code;

(b) any amounts in trust other than amounts for which a deduction was allowed under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522 of the Internal Revenue Code, if the amounts are segregated, as that term is defined in section 4947(a)(3) of the Internal Revenue Code, from amounts for which no deduction was allowable; or

(c) any amounts irrevocably transferred in trust before May 27, 1969.

NEW SECTION. **Section 103. Incorporation in trust instruments.** The provisions of [sections 100 through 102] shall be considered to be contained in the instrument creating every trust to which [sections 99 through 104] apply. Any provision of the instrument inconsistent with or contrary to [sections 99 through 104] is without effect.

NEW SECTION. **Section 104. Proceedings.** (1) A

proceeding contemplated by section 101(1)(3) of the federal Tax Reform Act of 1969 (Public Law 91-172) may be commenced pursuant to [section 179] by the organization involved. All specifically named beneficiaries of the organization and the attorney general shall be parties to the proceedings. Notwithstanding [section 165], this provision is not exclusive and does not limit any jurisdiction that otherwise exists.

(2) If an instrument creating a trust affected by this section has been recorded, a notice of pendency of judicial proceedings under this section shall be recorded in a similar manner within 10 days from the commencement of the proceedings. A duly certified copy of any final judgment or decree in the proceedings shall be similarly recorded.

NEW SECTION. **Section 105. General powers of trustee.** A trustee has the following powers without the need to obtain court authorization:

(1) the powers conferred by the trust instrument;

(2) except as limited in the trust instrument, the powers conferred by statute; and

(3) except as limited in the trust instrument, the power to perform any act that a trustee would perform for the purposes of the trust under the standard of care provided in [section 89].

NEW SECTION. **Section 106.** Power of court to relieve

trustee from restrictions on powers. [Sections 109 through 137] do not affect the power of a court to relieve a trustee from restrictions on the exercise of powers under the trust instrument.

NEW SECTION. **Section 107. Exercise of powers subject to trustee's duties.** The grant of a power to a trustee, whether by the trust instrument, by statute, or by the court, does not in itself require or permit the exercise of the power. The exercise of a power by a trustee is subject to the trustee's fiduciary duties.

NEW SECTION. **Section 108. Application of rules governing trustees' powers.** An instrument that incorporates the powers provided in former Title 72, chapter 21, ("Montana Trustees' Powers Act") shall be considered to refer to the powers provided [sections 109 through 137]. For this purpose, the trustee's powers under former Title 72, chapter 21, ("Montana Trustees' Powers Act") are not diminished and the trustee is not required to obtain court approval for exercise of a power for which court approval was not required by former law.

NEW SECTION. **Section 109. Collecting and holding property.** The trustee has the power to collect, hold, and retain trust property received from a trustor or any other person until, in the judgment of the trustee, disposition of the property should be made. The property may be retained

even though it includes property in which the trustee is personally interested.

NEW SECTION. **Section 110. Receiving additions to trust.** The trustee has the power to accept additions to the property of the trust from a trustor or any other person.

NEW SECTION. **Section 111. Participation in business -- change in form of business.** The trustee has the power to continue to participate in the operation of any business or other enterprise that is part of the trust property and may effect incorporation, dissolution, or other change in the form of the organization of the business or enterprise.

NEW SECTION. **Section 112. Investments.** The trustee has the power to invest in any kind of property, whether real, personal, or mixed.

NEW SECTION. **Section 113. Investments in obligations of United States government.** ~~In the absence of an express provision to the contrary in a trust instrument, whenever the instrument directs or permits investment in obligations of the United States government, the trustee has the power to invest in those obligations directly or in the form of an interest in a money market mutual fund registered under the investment company Act of 1940 (15 U.S.C. section 80a-1 et seq.) or an investment vehicle authorized for the collective investment of trust funds pursuant to section 9.18 of Title 12 of the Code of Federal Regulations, the portfolios of~~

~~which-are-limited-to-United--States--government--obligations and--to-repurchase-agreements-fully-collateralized-by-United States-government-obligations~~ IF THE PERSONAL REPRESENTATIVE IS AUTHORIZED TO INVEST FUNDS IN UNITED STATES OBLIGATIONS, HE MAY INVEST IN THESE OBLIGATIONS EITHER DIRECTLY OR IN THE FORM OF SECURITIES OF OR OTHER INTERESTS IN AN OPEN-END OR CLOSED-END MANAGEMENT TYPE INVESTMENT COMPANY OR INVESTMENT TURST REGISTERED UNDER THE INVESTMENT COMPANY ACT OF 1940 (15 U.S.C. 80A-1 THROUGH 80A-64), AS AMENDED, IF:

(1) THE PORTFOLIO OF THE INVESTMENT COMPANY OR INVESTMENT TRUST IS LIMITED TO UNITED STATES GOVERNMENT OBLIGATIONS AND REPURCHASE AGREEMENTS FULLY COLLATERALIZED BY UNITED STATES GOVERNMENT OBLIGATIONS; AND

(2) THE INVESTMENT COMPANY OR INVESTMENT TRUST TAKES DELIVERY OF THE COLLATERAL FOR ANY REPURCHASE AGREEMENT, EITHER DIRECTLY OR THROUGH AN AUTHORIZED CUSTODIAN.

NEW SECTION. **Section 114.** Deposits. (1) The trustee has the power to deposit trust funds at reasonable interest with any of the following:

(a) an insured commercial or savings bank;

(b) an insured building and loan association; or

(c) an insured credit union.

(2) A trustee may deposit trust funds as described in subsection (1) in a financial institution operated by, or that is an affiliate of, the trustee. For the purpose of

this subsection, "affiliate" means a corporation that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with another domestic or foreign corporation.

(3) This section does not limit the power of a trustee in a proper case to deposit trust funds in institutions as described in subsection (1) that are subject to notice or other conditions respecting withdrawal prescribed by law or governmental regulation.

(4) Nothing in this section prevents the trustee from holding an amount of trust property reasonably necessary for the orderly administration of the trust in the form of cash or in a checking account without interest.

NEW SECTION. **Section 115.** Acquisition and disposition of property. The trustee has the power to acquire or dispose of property, for cash or on credit, at public or private sale, or by exchange.

NEW SECTION. **Section 116.** Management of property. The trustee has the power to manage, control, divide, develop, improve, exchange, partition, change the character of, or abandon trust property or any interest therein.

NEW SECTION. **Section 117.** Encumbrances. The trustee has the power to encumber, mortgage, or pledge trust property for a term within or extending beyond the term of the trust in connection with the exercise of any power

vested in the trustee.

NEW SECTION. **Section 118. Repairs and alterations of property.** The trustee has the power to do any of the following:

(1) make ordinary or extraordinary repairs, alterations, improvements in buildings or other trust property;

(2) demolish any improvements; or

(3) raze existing or erect new party walls or buildings.

NEW SECTION. **Section 119. Development of land.** The trustee has the power to do any of the following:

(1) subdivide or develop land;

(2) dedicate land to public use;

(3) make or obtain the vacation of plats and adjust boundaries;

(4) adjust differences in valuation on exchange or partition by giving or receiving consideration; or

(5) dedicate easements to public use without consideration.

NEW SECTION. **Section 120. Leases.** The trustee has the power to enter into a lease for any purpose as lessor or lessee with or without the option to purchase or renew and for a term within or extending beyond the term of the trust.

NEW SECTION. **Section 121. Mineral leases.** The trustee

has the power to enter into a lease or arrangement for exploration and removal of gas, oil, or other minerals, and to enter into a community oil lease or a pooling or utilization agreement, and for a term within or extending beyond the term of the trust.

NEW SECTION. **Section 122. Options.** The trustee has the power to grant an option involving disposition of trust property or to take an option for the acquisition of any property, and an option may be granted or taken that is exercisable beyond the term of the trust.

NEW SECTION. **Section 123. Voting rights with respect to corporate shares, memberships, or property.** With respect to any shares of stock of a domestic or foreign corporation, any membership in a nonprofit corporation, or any other property, a trustee has the power to do any of the following:

(1) vote in person and give proxies to exercise any voting rights with respect to the shares, memberships, or property;

(2) waive notice of a meeting or give consent to the holding of a meeting; or

(3) authorize, ratify, approve, or confirm any action that could be taken by shareholders, members, or property owners.

NEW SECTION. **Section 124. Payment of calls and**

assessments. The trustee has the power to pay calls, assessments, and any other sums chargeable or accruing against or on account of securities.

NEW SECTION. **Section 125.** **Stock subscriptions and conversions.** The trustee has the power to sell or exercise stock subscription or conversion rights.

NEW SECTION. **Section 126.** **Consent to change in form of business -- voting trusts.** The trustee has the power to consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise, and to participate in voting trusts, pooling arrangements, and foreclosures, and in connection therewith, to deposit securities with and transfer title and delegate discretions to any protective or other committee as the trustee may consider advisable.

NEW SECTION. **Section 127.** **Holding securities in name of nominee.** The trustee has the power to hold a security in the name of a nominee or in other form without disclosure of the trust so that title to the security may pass by delivery, but the trustee is liable for any act of the nominee in connection with the security so held.

NEW SECTION. **Section 128.** **Insurance.** The trustee has the power to insure the property of the trust against damage or loss and to insure the trustee against liability with

respect to third persons.

NEW SECTION. **Section 129.** **Borrowing money.** The trustee has the power to borrow money for any trust purpose to be repaid from trust property.

NEW SECTION. **Section 130.** **Payment and settlement of claims.** The trustee has the power to do any of the following:

(1) pay or contest any claim;

(2) settle a claim by or against the trust by compromise, arbitration, or otherwise; or

(3) release, in whole or in part, any claim belonging to the trust.

NEW SECTION. **Section 131.** **Payment of taxes, trustee's compensation, and other expenses.** The trustee has the power to pay taxes, assessments, reasonable compensation of the trustee and of employees and agents of the trust, and other expenses incurred in the collection, care, administration, and protection of the trust.

NEW SECTION. **Section 132.** **Loans to beneficiary.** The trustee has the following powers:

(1) to make loans out of trust property to the beneficiary on terms and conditions that the trustee determines are fair and reasonable under the circumstances; and

(2) to guarantee loans to the beneficiary by

encumbrances on trust property.

NEW SECTION. **Section 133.** **Distribution to beneficiaries under legal disability.** The trustee has the power to pay any sum distributable to a beneficiary, without regard to whether the beneficiary is under a legal disability, by paying the sum to the beneficiary or by paying the sum to another person for the use or benefit of the beneficiary.

NEW SECTION. **Section 134.** **Nature and value of distributions.** The trustee has the power to effect distribution of property and money in divided or undivided interests and to adjust resulting differences in valuation. A distribution in kind may be made pro rata or non-pro rata.

NEW SECTION. **Section 135.** **Hiring persons.** The trustee has the power to hire persons, including accountants, attorneys, auditors, investment advisors, or other agents, even if they are associated or affiliated with the trustee, to advise or assist the trustee in the performance of administrative duties.

NEW SECTION. **Section 136.** **Execution and delivery of instruments.** The trustee has the power to execute and deliver all instruments which are needed to accomplish or facilitate the exercise of the powers vested in the trustee.

NEW SECTION. **Section 137.** **Actions and proceedings.** The trustee has the power to prosecute or defend actions,

claims, or proceedings for the protection of trust property and of the trustee in the performance of the trustee's duties.

NEW SECTION. **Section 138.** **Short title.** [Sections 138 through 150] may be cited as the "Revised Uniform Principal and Income Act".

NEW SECTION. **Section 139.** **Definitions.** As used in [sections 138 through 150], the following definitions apply:

(1) "Income beneficiary" means the person to whom income is presently payable or for whom it is accumulated for distribution as income.

(2) "Inventory value" means the adjusted basis for federal income tax purposes.

(3) "Remainder beneficiary" means the person entitled to principal, including income which has been accumulated and added to principal.

(4) "Trustee" means the original trustee, any succeeding or added trustee, and the personal representative of a decedent's estate whenever a provision of this part is applicable to the estate.

NEW SECTION. **Section 140.** **Duty of trustee as to receipts and expenditures.** (1) A trust shall be administered with due regard to the respective interests of income beneficiaries and remainder beneficiaries. A trust is so administered with respect to the allocation of receipts and

expenditures if a receipt is credited or an expenditure is charged to income or principal or partly to each in any of the following ways:

(a) in accordance with the terms of the trust instrument, notwithstanding contrary provisions of this part;

(b) in the absence of any contrary terms of the trust instrument, in accordance with the provisions of this part; or

(c) if neither subsection (a) nor (b) is applicable, in accordance with the standard of care provided in [section 89] and with what is reasonable and equitable in view of the interests of those entitled to income as well as of those entitled to principal.

(2) If the trust gives the trustee discretion in crediting a receipt or charging an expenditure to income or principal or partly to each, no inference that the trustee has improperly exercised such discretion arises from the fact that the trustee has made an allocation contrary to a provision of this part.

NEW SECTION. **Section 141.** **Income -- principal -- charges.** (1) Income is the return in money or property derived from the use of principal, including return received as:

(a) rent of real or personal property, including sums

received for cancellation or renewal of a lease;

(b) interest on money lent, including sums received as consideration for the prepayment of principal except as provided in [section 145] on bond premium and bond discount;

(c) income earned during administration of a decedent's estate as provided in [section ~~144~~ 143];

(d) corporate distributions as provided in [section ~~145~~ 144];

(e) accrued increment on bonds or other obligations issued at discount as provided in [section 145];

(f) receipts from business and farming operations as provided in [section 146];

(g) receipts from disposition of natural resources as provided in [sections 147 and 148]; or

(h) receipts from other principal subject to depletion as provided in [section 149].

(2) Principal is the property which has been set aside by the owner or the person legally empowered so that it is held in trust eventually to be delivered to a remainder beneficiary, while the return or use of the principal is in the meantime taken or received by or held for accumulation for an income beneficiary. Principal includes the following:

(a) consideration received by the trustee on the sale or other transfer of principal or a repayment of a loan or as a refund or replacement or change in the form of

principal;

(b) proceeds of property taken on eminent domain proceedings;

(c) proceeds of insurance upon property forming part of the principal except proceeds of insurance upon a separate interest of an income beneficiary;

(d) stock dividends, receipts on liquidation of a corporation, and other corporate distributions as provided in [section 144];

(e) receipts from the disposition of corporate securities as provided in [section 145];

(f) royalties and other receipts from disposition of natural resources as provided in [sections 147 and 148];

(g) receipts from other principal subject to depletion as provided in [section 149];

(h) any profit resulting from any change in the form of principal; or

(i) any allowances for depreciation established under [section 150(1)(b)].

(3) After determining income and principal in accordance with the terms of the trust instrument or of this part, the trustee shall charge to income or principal the expenses and other charges as provided in [section 150].

NEW SECTION. **Section 142. When right to income arises -- apportionment of income.** (1) An income beneficiary is

entitled to income from the date specified in the trust instrument or, if none is specified, from the date an item of property becomes subject to the trust. In the case of an item of property becoming subject to a trust by reason of a person's death, it becomes subject to the trust as of the date of the death of the person even though there is an intervening period of administration of the person's estate.

(2) Upon property becoming subject to a trust by reason of a person's death:

(a) Receipts due but not paid at the date of death of the person are principal.

(b) Receipts in the form of periodic payments (other than corporate distributions to stockholders), including rent, interest, or annuities, not due at the date of the death of the person shall be treated as accruing from day to day. That portion of the receipt accruing before the date of death is principal and the balance is income.

(3) In all other cases, any receipt from income-producing property is income even though the receipt was earned or accrued in whole or in part before the date when the property became subject to the trust.

(4) On termination of an income interest, the income beneficiary whose interest is terminated, or his or her estate, is entitled to income:

(a) undistributed on the date of termination;

(b) due but not paid to the trustee on the date of termination; and

(c) in the form of periodic payments (other than corporate distributions to stockholders), including rent, interest, or annuities, not due on the date of termination, accrued from day to day.

(5) Corporate distributions to stockholders shall be treated as due on the day fixed by the corporation for determination of stockholders of record entitled to distribution or, if no date is fixed, on the date of declaration of the distribution by the corporation.

NEW SECTION. **Section 143.** Income earned during administration of decedent's estate. (1) Unless the will otherwise provides and subject to subsection (2), all expenses incurred in connection with the settlement of a decedent's estate, including debts, funeral expenses, estate taxes, interest and penalties concerning taxes, family allowances, fees of attorneys and personal representatives, and court costs, shall be charged against the principal of the estate.

(2) Unless the will otherwise provides, income from the property of a decedent's estate after the death of the testator and before distribution, including income from property used to discharge liabilities, shall be determined in accordance with the rules applicable to a trustee under

[sections 1 through 164] and distributed as follows:

(a) to specific legatees and devisees, the income from the property bequeathed or devised to them respectively, less taxes, ordinary repairs, and other expenses of management and operation of the property, and an appropriate portion of interest accrued since the death of the testator and of taxes imposed on income (excluding taxes on capital gains) that accrue during the period of administration;

(b) to all other legatees and devisees, except legatees of pecuniary bequests not in trust, the balance of the income, less the balance of taxes, ordinary repairs, and other expenses of management and operation of all property from which the estate is entitled to income, interest accrued since the death of the testator, and taxes imposed on income (excluding taxes on capital gains) that accrue during the period of administration, in proportion to their respective interests in the undistributed property of the estate computed at times of distribution on the basis of inventory value.

(3) Income received by a trustee under subsection (2) shall be treated as income of the trust.

NEW SECTION. **Section 144.** Corporate distributions. (1) Corporate distributions of shares of the distributing corporation, including distributions in the form of a stock split or stock dividend, are principal. A right to

subscribe to shares or other securities issued by the distributing corporation accruing to stockholders on account of their stock ownership and the proceeds of any sale of the right, are principal.

(2) Except to the extent that the corporation indicates that some part of a corporate distribution is a settlement of preferred or guaranteed dividends accrued since the trustee became a stockholder or is in lieu of an ordinary cash dividend, a corporate distribution is principal if the distribution is pursuant to any of the following:

(a) a call of shares;

(b) a merger, consolidation, reorganization, or other plan by which assets of the corporation are acquired by another corporation; or

(c) a total or partial liquidation of the corporation, including any distribution which the corporation indicates is a distribution in total or partial liquidation or any distribution of assets, other than cash, pursuant to a court decree or final administrative order by a government agency ordering distribution of the particular assets.

(3) Distributions made from ordinary income by a regulated investment company or by a trust qualifying and electing to be taxed under federal law as a real estate investment trust are income. All other distributions made by

the company or trust, including distributions from capital gains, depreciation, or depletion, whether in the form of cash or an option to take new stock or cash or an option to purchase additional shares, are principal.

(4) Except as provided in subsections (1) through (3), all corporate distributions are income, including cash dividends, distributions of or rights to subscribe to shares or securities or obligations of corporations other than the distributing corporation, and the proceeds of the rights or property distributions. Except as provided in subsections (2) and (3), if the distributing corporation gives a stockholder an option to receive a distribution either in cash or in its own shares, the distribution chosen is income.

(5) The trustee may rely upon any statement of the distributing corporation as to any fact relevant under any provision of this part concerning the source or character of dividends or distributions of corporate assets.

NEW SECTION. **Section 145. Bond premium and discount.** (1) Bonds or other obligations for the payment of money are principal at their inventory value, except as provided in subsection (2) for discount bonds. No provision shall be made for amortization of bond premiums or for accumulation for discount. The proceeds of sale, redemption, or other disposition of the bonds or obligations are principal.

(2) The increment in value of a bond or other obligation for the payment of money payable at a future time in accordance with a fixed schedule of appreciation in excess of the price at which it was issued is distributable as income. The increment in value is distributable to the beneficiary who was the income beneficiary at the time of increment from the first principal cash available or, if none is available, when realized by sale, redemption, or other disposition. Whenever unrealized increment is distributed as income but out of principal, the principal shall be reimbursed for the increment when realized.

NEW SECTION. **Section 146.** Business and farming operations. (1) If a trustee uses any part of the principal in the continuance of a business of which the trustor was a sole proprietor or a partner, the net profits of the business, computed in accordance with recognized methods of accounting for a comparable business, are income. If a loss results in any fiscal or calendar year, the loss falls on principal and may not be carried into any other fiscal or calendar year for purposes of calculating net income.

(2) Recognized methods of accounting for a comparable business shall be used to determine income from an agricultural or farming operation, including the raising of animals or the operation of a nursery.

NEW SECTION. **Section 147.** Disposition of natural

resources. (1) If any part of the principal consists of a right to receive royalties, overriding or limited royalties, working interests, production payments, net profit interests, or other interests in minerals or other natural resources in, on, or under land, the receipts from taking the natural resources from the land shall be allocated as follows:

(a) If received as rent on a lease or extension payments on a lease, the receipts are income.

(b) If received from a production payment, the receipts are income to the extent of any factor for interest or its equivalent provided in the governing instrument. There shall be allocated to principal the fraction of the balance of the receipts which the unrecovered cost of the production payment bears to the balance owed on the production payment, exclusive of any factor for interest or its equivalent. The receipts not allocated to principal are income.

(c) If received as a royalty, overriding or limited royalty or bonus, or from a working, net profit, or any other interest in minerals or other natural resources, receipts not provided for in subsections (1)(a) and (1)(b) shall be apportioned on a yearly basis in accordance with this paragraph whether or not any natural resource was being taken from the land at the time the trust was established.

The receipts shall be allocated entirely to income or apportioned between income and principal as the trustee in its discretion may determine, but the amount added to principal as an allowance for depletion may not exceed the lesser of:

(i) the percentage of gross receipts allowed as a deduction for depletion in computing taxable income for federal income tax purposes or

(ii) 50% of the net receipts remaining after payment of expenses, direct and indirect, computed without allowance for depletion.

(2) This section does not apply to timber, water, soil, sod, dirt, turf, or mosses.

NEW SECTION. **Section 148.** Timber. If any part of the principal consists of land from which merchantable timber may be removed, the receipts from taking the timber from the land shall be allocated in accordance with [section 140(1)(c)].

NEW SECTION. **Section 149.** Other property subject to depletion. Except as provided in [sections 147 and 148], if the principal consists of property subject to depletion, including leaseholds, patents, copyrights, royalty rights, and rights to receive payments on a contract for deferred compensation, receipts from the property, not in excess of 5% per year of its inventory value, are income, and the

balance is principal.

NEW SECTION. **Section 150.** Charges against income and principal. (1) The following charges shall be made against income:

(a) ordinary expenses incurred in connection with the administration, management, or preservation of the trust property, including:

(i) regularly recurring taxes assessed against any portion of the principal;

(ii) water rates;

(iii) premiums on insurance taken upon the interests of the income beneficiary, remainder beneficiary, or trustee;

(iv) interest paid by the trustee; and

(v) ordinary repairs;

(b) a reasonable allowance for depreciation on property subject to depreciation under generally accepted accounting principles, but no allowance may be made for depreciation on that portion of any real property used by a beneficiary as a residence or for depreciation of any property held by the trustee on July 1, 1983, for which the trustee was not then making an allowance for depreciation;

(c) not less than one-half of court costs, attorney fees, and other fees on periodic judicial accounting, unless the court directs otherwise;

(d) court costs, attorney fees, and fees on other

accountings or judicial proceedings if the matter primarily concerns the income interest, unless the court directs otherwise;

(e) not less than one-half of the trustee's regular compensation, whether based on a percentage of principal or income, and all expenses reasonably incurred for current management of principal and application of income, unless the court directs otherwise; and

(f) any tax levied upon receipts defined as income under [sections 138 through 150] or the trust instrument and payable by the trustee.

(2) If charges against income are of unusual amount, the trustee may, by means of reserves or other reasonable means, charge them over a reasonable period of time and withhold from distribution sufficient sums to regularize distributions.

(3) (a) The following charges shall be made against principal:

(i) trustee's compensation not chargeable to income under subsections (1)(d) and (1)(e);

(ii) special compensation of trustees;

(iii) expenses reasonably incurred in connection with principal, court costs, and attorney fees primarily concerning matters of principal; and

(iv) trustee's compensation computed on principal as an

acceptance, distribution, or termination fee;

(b) charges not provided for in subsection (1), including:

(i) the costs of investing and reinvesting principal;

(ii) the payments on principal of an indebtedness, including a mortgage amortized by periodic payments of principal;

(iii) expenses for preparation of property for rental or sale; and

(iv) unless the court directs otherwise, expenses incurred in maintaining or defending any action to construe the trust or protect it or the property or assure the title of any trust property;

(c) extraordinary repairs or expenses incurred in making a capital improvement to principal, including special assessments, but a trustee may establish an allowance for ~~depreciation~~ DEPRECIATION out of income to the extent permitted by subsection (1)(b) and by [section 146];

(d) any tax levied upon profit, gain, or other receipts allocated to principal, notwithstanding denomination of the tax as an income tax by the taxing authority; and

(e) if an estate or inheritance tax is levied in respect to a trust in which both an income beneficiary and a remainder beneficiary have an interest, any amount

apportioned to the trust, including interest and penalties, even though the income beneficiary also has rights in the principal.

(4) Regularly recurring charges payable from income shall be apportioned to the same extent and in the same manner that income is apportioned under [section 142].

NEW SECTION. **Section 151.** **Breach of trust.** A violation by the trustee of any duty that the trustee owes the beneficiary is a breach of trust.

NEW SECTION. **Section 152.** **Trustee's liability to beneficiary for acts of agent.** (1) Except as provided in subsection (2), the trustee is not liable to the beneficiary for the acts or omissions of an agent.

(2) The trustee is liable to the beneficiary for an act or omission of an agent employed by the trustee in the administration of the trust that would be a breach of the trust if committed by the trustee under any of the following circumstances:

(a) whenever the trustee has the power to direct the act of the agent;

(b) whenever the trustee delegates to the agent the authority to perform an act that the trustee is under a duty not to delegate;

(c) whenever the trustee does not use reasonable care in the selection of the agent or the retention of the agent

selected by the trustee;

(d) whenever the trustee does not exercise proper supervision over the agent's conduct in a case where the trustee has the power to supervise the agent;

(e) whenever the trustee conceals the act of the agent; or

(f) whenever the trustee neglects to take reasonable steps to compel the agent to redress the wrong in a case where the trustee knows of the agent's acts or omissions.

(3) The liability of a trustee for acts or omissions of agents that occurred before October 1, 1989, is governed by prior law and not by this section.

NEW SECTION. **Section 153.** **Trustee's liability to beneficiary for acts of cotrustee.** (1) Except as provided in subsection (2), a trustee is not liable to the beneficiary for a breach of trust committed by a cotrustee.

(2) A trustee is liable to the beneficiary for a breach committed by a cotrustee under any of the following circumstances:

(a) whenever the trustee participates in a breach of trust committed by the cotrustee;

(b) whenever the trustee improperly delegates the administration of the trust to the cotrustee;

(c) whenever the trustee approves, knowingly acquiesces in, or conceals a breach of trust committed by

the cotrustee;

(d) whenever the trustee negligently enables the cotrustee to commit a breach of trust; or

(e) whenever the trustee neglects to take reasonable steps to compel the cotrustee to redress a breach of trust in a case where the trustee knows or has information from which the trustee reasonably should have known of the breach.

(3) The liability of a trustee for acts or omissions of a cotrustee that occurred before October 1, 1989, is governed by prior law and not by this section.

NEW SECTION. **Section 154. Trustee's liability to beneficiary for acts of predecessor.** (1) Except as provided in subsection (2), a successor trustee is not liable to the beneficiary for a breach of trust committed by a predecessor trustee.

(2) A successor trustee is liable to the beneficiary for breach of trust involving acts or omissions of a predecessor trustee in any of the following circumstances:

(a) whenever the successor trustee knows or has information from which the successor trustee reasonably should have known of a situation constituting a breach of trust committed by the predecessor trustee, and the successor trustee improperly permits it to continue;

(b) whenever the successor trustee neglects to take

reasonable steps to compel the predecessor trustee to deliver the trust property to the successor trustee; or

(c) whenever the successor trustee neglects to take reasonable steps to redress a breach of trust committed by the predecessor trustee in a case where the successor trustee knows or has information from which the successor trustee should have known of the predecessor trustee's breach.

(3) The liability of a trustee for acts or omissions of a predecessor trustee that occurred before October 1, 1989, is governed by prior law and not by this section.

NEW SECTION. **Section 155. Remedies for breach of trust.** (1) If a trustee commits a breach of trust, or threatens to commit a breach of trust, a beneficiary or cotrustee of the trust may commence a proceeding for any of the following purposes that is appropriate:

(a) to compel the trustee to perform the trustee's duties;

(b) to enjoin the trustee from committing a breach of trust;

(c) to compel the trustee to redress a breach of trust by payment of money or otherwise;

(d) to appoint a receiver or temporary trustee to take possession of the trust property and administer the trust;

(e) to remove the trustee;

(f) subject to [section 210], to set aside acts of the trustee;

(g) to reduce or deny compensation of the trustee;

(h) subject to [section 210], to impose an equitable lien or a constructive trust on trust property; or

(i) subject to [section 210], to trace trust property that has been wrongfully disposed of and recover the property or its proceeds.

(2) The provision of remedies for breach of trust in subsection (1) does not prevent resort to any other appropriate remedy provided by statute or the common law.

NEW SECTION. **Section 156. Remedies for breach exclusively in equity.** The remedies of a beneficiary against the trustee are exclusively in equity.

NEW SECTION. **Section 157. Measure of liability for breach of trust.** (1) If the trustee commits a breach of trust, the trustee is chargeable with any of the following that is appropriate under the circumstances:

(a) any loss or depreciation in value of the trust estate resulting from the breach of trust, with interest;

(b) any profit made by the trustee through the breach of trust, with interest; or

(c) any profit that would have accrued to the trust estate if the loss of profit is the result of the breach of trust.

(2) If the trustee has acted reasonably under the circumstances as known to the trustee, the court, in its discretion, may excuse the trustee in whole or in part from liability under subsection (1) if it would be equitable to do so.

NEW SECTION. **Section 158. Measure of liability for interest.** If the trustee is liable for interest pursuant to [section 157], the trustee is liable for the greater of the following amounts:

(1) the amount of interest that accrues at the legal rate on judgments; or

(2) the amount of interest actually received.

NEW SECTION. **Section 159. Limitations on proceedings against trustee.** (1) Unless a claim is previously barred by adjudication, consent, limitation, or otherwise:

(a) If a beneficiary has received an interim or final account in writing, or other written report, that adequately discloses the existence of a claim against the trustee for breach of trust, the claim is barred as to that beneficiary unless a proceeding to assert the claim is commenced within 3 years after receipt of the account or report. An account or report adequately discloses existence of a claim if it provides sufficient information so that the beneficiary knows of the claim or reasonably should have inquired into the existence of the claim.

(b) If an interim or final account or other report does not adequately disclose the existence of a claim against the trustee for breach of trust, the claim is barred as to that beneficiary unless a proceeding to assert the claim is commenced within 3 years after the beneficiary discovered, or reasonably should have discovered, the existence of the claim.

(2) For the purpose of subsection (1), a beneficiary is considered to have received an account or report, as follows:

(a) in the case of an adult who is reasonably capable of understanding the account or report, if it is received by the adult personally;

(b) in the case of an adult who is not reasonably capable of understanding the account or report, if it is received by the person's legal representative, including a guardian ad litem or other person appointed for this purpose; or

(c) in the case of a minor, if it is received by the minor's guardian or, if the minor does not have a guardian, if it is received by the minor's parent so long as the parent does not have a conflict of interest.

(3) The limitations period applicable to actions by a beneficiary against a trustee on a claim that arose before October 1, 1989, is governed by this section, except that a

claim arising before October 1, 1989, is not barred by this section until October 1, 1990.

NEW SECTION. **Section 160.** Exculpation of trustee. (1) Except as provided in subsection (2), the trustee can be relieved of liability for breach of trust by provisions in the trust instrument.

(2) A provision in the trust instrument is not effective to relieve the trustee of liability:

(a) for breach of trust committed intentionally, with gross negligence, or with reckless indifference to the interest of the beneficiary; or

(b) for any profit that the trustee derives from a breach of trust.

NEW SECTION. **Section 161.** Nonliability for following instructions under revocable trust. (1) Notwithstanding [section 160], a trustee of a revocable trust is not liable to a beneficiary for any act performed or omitted pursuant to written directions from the person holding the power to revoke, including a person to whom the power to direct the trustee is delegated.

(2) Subsection (1) applies to a trust that is revocable in part with respect to the interest of the beneficiary in that part of the trust property.

NEW SECTION. **Section 162.** Consent of beneficiary to relieve trustee of liability for breach of trust. (1) Except

as provided in subsections (2) and (3), a beneficiary may not hold the trustee liable for an act or omission of the trustee as a breach of trust if the beneficiary consented to the act or omission before or at the time of the act or omission.

(2) The consent of the beneficiary does not preclude the beneficiary from holding the trustee liable for a breach of trust in any of the following circumstances:

(a) whenever the beneficiary was under an incapacity at the time of the consent or of the act or omission;

(b) whenever the beneficiary at the time consent was given did not know of his rights and of the material facts that the trustee knew or should have known and that the trustee did not reasonably believe that the beneficiary knew; or

(c) whenever the consent of the beneficiary was induced by improper conduct of the trustee.

(3) Whenever the trustee has an interest in the transaction adverse to the interest of the beneficiary, the consent of the beneficiary does not preclude the beneficiary from holding the trustee liable for a breach of trust under any of the circumstances described in subsection (2) or whenever the transaction to which the beneficiary consented was not fair and reasonable to the beneficiary.

NEW SECTION. **Section 163.** **Discharge of trustee's liability by release or contract.** (1) Except as provided in subsection (2), a beneficiary may be precluded from holding the trustee liable for a breach of trust by the beneficiary's release or contract effective to discharge the trustee's liability to the beneficiary for that breach.

(2) A release or contract is not effective to discharge the trustee's liability for a breach of trust in any of the following circumstances:

(a) whenever the beneficiary was under an incapacity at the time of making the release or contract;

(b) whenever the beneficiary did not know of his rights and of the material facts:

(i) that the trustee knew or reasonably should have known; and

(ii) that the trustee did not reasonably believe that the beneficiary knew;

(c) whenever the release or contract of the beneficiary was induced by improper conduct of the trustee; or

(d) whenever the transaction involved a bargain with the trustee that was not fair and reasonable.

NEW SECTION. **Section 164.** **Discharge of trustee's liability by subsequent affirmance.** (1) Except as provided in subsection (2), if the trustee, in breach of trust, enters into a transaction that the beneficiary may at his

option reject or affirm, and the beneficiary affirms the transaction, the beneficiary may not thereafter reject it and hold the trustee liable for any loss occurring after the trustee entered into the transaction.

(2) The affirmance of a transaction by the beneficiary does not preclude the beneficiary from holding a trustee liable for a breach of trust if, at the time of the affirmance, any of the following circumstances existed:

(a) the beneficiary was under an incapacity;

(b) the beneficiary did not know of his rights and of the material facts;

(i) that the trustee knew or reasonably should have known; and

(ii) that the trustee did not reasonably believe that the beneficiary knew;

(c) the affirmance was induced by improper conduct of the trustee; or

(d) the transaction involved a bargain with the trustee that was not fair and reasonable.

NEW SECTION. **Section 165.** **Subject matter jurisdiction.** (1) The district court having jurisdiction over the trust pursuant to [sections 1 through 215] has exclusive jurisdiction of proceedings concerning the internal affairs of trusts.

(2) The district court having jurisdiction over the

trust pursuant to [sections 1 through 215] has concurrent jurisdiction of the following:

(a) actions and proceedings to determine the existence of trusts;

(b) actions and proceedings by or against creditors or debtors of trusts; and

(c) other actions and proceedings involving trustees and third persons.

NEW SECTION. **Section 166.** **Full-power court.** In proceedings concerning the internal affairs of trusts commenced pursuant to [sections 1 through 215], the court has all the powers of a district court exercising its general jurisdiction.

NEW SECTION. **Section 167.** **Principal place of administration of trust.** (1) The principal place of administration of the trust is the usual place where the day-to-day activity of the trust is carried on by the trustee or its representative who is primarily responsible for the administration of the trust.

(2) If the principal place of administration of the trust cannot be determined under subsection (1), it shall be determined as follows:

(a) if the trust has a single trustee, the principal place of administration of the trust is the trustee's residence or usual place of business; or

(b) if the trust has more than one trustee, the principal place of administration of the trust is the residence or usual place of business of any of the cotrustees as agreed upon by them. If not agreed upon by the cotrustees, the principal place of administration of the trust is the residence or usual place of business of any of the cotrustees.

NEW SECTION. **Section 168. Jurisdiction over trustees and beneficiaries.** Subject to [section 169]:

(1) by accepting the trusteeship of a trust having its principal place of administration in this state the trustee submits personally to the jurisdiction of the court under [sections 1 through 215]; and

(2) to the extent of their interests in the trust, all beneficiaries of a trust having its principal place of administration in this state are subject to the jurisdiction of the court under [sections 1 through 215].

NEW SECTION. **Section 169. Basis of jurisdiction over trust, trust property, and trust parties.** The court may exercise jurisdiction in proceedings under this division on any basis permitted by Rule 4 of the Rules of Civil Procedure.

NEW SECTION. **Section 170. Venue.** (1) The proper county for commencement of a proceeding pursuant to [sections 165 through 178] is either of the following:

(a) in the case of a living trust, the county where the principal place of administration of the trust is located; or

(b) in the case of a testamentary trust, either the county where the decedent's estate is administered or where the principal place of administration of the trust is located.

(2) If a living trust has no trustee, the proper county for commencement of a proceeding for appointing a trustee is the county where the trust property, or some portion of the trust property, is located.

(3) Except as otherwise provided in subsections (1) and (2), the proper county for commencement of a proceeding pursuant to [sections 1 through 215] is determined by the rules applicable to civil actions generally.

NEW SECTION. **Section 171. Jury trial.** There is no right to a jury trial in proceedings under [sections 1 through 215] concerning the internal affairs of trusts.

NEW SECTION. **Section 172. Application of part.** This part applies to notice in proceedings commenced pursuant to [sections 1 through 215] or notice otherwise required or permitted by [sections 1 through 215].

NEW SECTION. **Section 173. Manner of mailing -- when mailing complete.** (1) If a notice or other paper is required or permitted to be mailed, it shall be sent by first-class

mail.

(2) Mailing is complete when the notice or other paper is deposited in the mail, postage prepaid, addressed to the person to whom it is mailed.

NEW SECTION. **Section 174.** Personal delivery instead of mailing. If a notice or other paper is required or permitted to be mailed, it may be delivered personally to the person to whom it is required or permitted to be mailed.

NEW SECTION. **Section 175.** Proof of giving notice -- conclusiveness of order. (1) Proof of the giving of notice shall be made at or before the hearing to the satisfaction of the court.

(2) If it appears to the satisfaction of the court that notice has been regularly given or that the party entitled to notice has waived, the court shall so find in its order. When the order becomes final, it is conclusive on all persons, whether or not in being.

NEW SECTION. **Section 176.** Additional notice. (1) The court may, on its own motion or on motion of a trustee or other person interested in the trust, require that further or additional notice be given at any state of the proceeding. The court may prescribe the form and method of the notice to be given.

(2) A petitioner or other person required to give notice may cause notice to be given to any person interested

in the trust without the need for a court order.

NEW SECTION. **Section 177.** Shortening time. The court may for good cause shorten the time for giving a notice.

NEW SECTION. **Section 178.** Notice of postponed hearings. The court may continue or postpone any hearing, from time to time, in the interest of justice, and no further notice of the continued or postponed hearing is required unless otherwise ordered by the court.

NEW SECTION. **Section 179.** Petitioners -- grounds for petition. (1) Except as provided in [section 68], a trustee or beneficiary of a trust may petition the court under [sections 165 through 203] concerning the internal affairs of the trust or to determine the existence of the trust.

(2) Proceedings concerning the internal affairs of a trust include, but are not limited to, proceedings for any of the following purposes:

(a) determining questions of construction of a trust instrument;

(b) determining the existence or nonexistence of any immunity, power, privilege, duty, or right;

(c) determining the validity of a trust provision;

(d) ascertaining beneficiaries and determining to whom property shall pass or be delivered upon final or partial termination of the trust, to the extent the determination is not made by the trust instrument;

(e) settling the accounts and passing upon the acts of the trustee, including the exercise of discretionary powers;

(f) instructing the trustee;

(g) compelling the trustee to report information about the trust or account to the beneficiary, if:

(i) the trustee has failed to submit a requested report or account within 60 days after written request of the beneficiary; and

(ii) no report or account has been made within 6 months preceding the request;

(h) granting powers to the trustee;

(i) fixing or allowing payment of the trustee's compensation;

(j) appointing or removing a trustee;

(k) accepting the resignation of a trustee;

(l) compelling redress of a breach of the trust by any available remedy;

(m) approving or directing the modification or termination of the trust;

(n) approving or directing the combination or division of trusts;

(o) amending or conforming the trust instrument in the manner required to qualify a decedent's estate for the charitable estate tax deduction under federal law, including the addition of mandatory governing instrument requirements

for a charitable remainder trust as required by final regulations and rulings of the United States internal revenue service, in any case in which all parties interested in the trust have submitted written agreement to the proposed changes or written disclaimer of interest;

(p) authorizing or directing transfer of a trust or trust property to or from another jurisdiction;

(q) directing transfer of a testamentary trust subject to continuing court jurisdiction from one county to another;

(r) approving removal of a testamentary trust from continuing court jurisdiction; or

(s) reforming or excusing compliance with the governing instrument of an organization pursuant to [section 104].

NEW SECTION. **Section 180.** Commencement of proceeding. (1) A proceeding under [sections 165 through 203] is commenced by filing a verified petition stating facts showing that the petition is authorized under this chapter and the grounds of the petition.

(2) When a petition that requires a hearing is filed with the court clerk, the clerk shall set the matter for hearing.

NEW SECTION. **Section 181.** Dismissal of petition. The court may dismiss a petition if it appears that the proceeding is not reasonably necessary for the protection of

the interests of the trustee or beneficiary.

NEW SECTION. **Section 182. Notice.** At least 14 days before the time set for the hearing on the petition, the petitioner shall cause notice of the time and place of hearing to be mailed to any of the following persons who are not petitioners:

(1) all trustees;

(2) all beneficiaries who are entitled to notice; and

(3) the attorney general, if the petition is related to a charitable trust subject to the jurisdiction of the attorney general, unless the attorney general waives notice.

NEW SECTION. **Section 183. Request for special notice.** (1) If proceedings involving a trust are pending, a beneficiary of the trust may, in person or by attorney, serve on the trustee or the trustee's attorney and file with the court clerk where the proceedings are pending a written request stating that the beneficiary desires special notice of the filing of petitions in the proceeding relating to any or all of the purposes described in [section 179] and giving an address for receiving notice by mail. Proof of service of the request on the trustee shall be filed with the court clerk when the request is filed.

(2) Except as provided in subsection (3), after serving and filing a request and proof of service pursuant to subsection (1), the beneficiary is entitled to notice

pursuant to [section 182].

(3) A request for special notice made by a beneficiary whose right to notice is restricted by [section 70] is not effective.

NEW SECTION. **Section 184. Request for copy of petition.** If a trustee or beneficiary has served and filed either a notice of appearance, in person or by counsel, directed to the petitioner or the petitioner's counsel in connection with a particular petition and proceeding or a written request for a copy of the petition, and has given an address to which notice or a copy of the petition may be mailed or delivered, the petitioner shall cause a copy of the petition to be mailed to that person within 5 days after service of the notice of appearance or receipt of the request.

NEW SECTION. **Section 185. Authority to make necessary orders -- temporary trustee.** The court in its discretion may make any orders and take any other action necessary or proper to dispose of the matters presented by the petition, including appointment of a temporary trustee to administer the trust in whole or in part.

NEW SECTION. **Section 186. Appeal.** An appeal may be taken from the grant or denial of any final order made under [sections 165 through 203], except the following:

(1) compelling the trustee to submit an account or

report acts as trustee to a beneficiary pursuant to [section 179(2)(g)];

(2) accepting the resignation of a trustee pursuant to [section 179(2)(k)]; or

(3) approving removal of a testamentary trust from continuing court jurisdiction pursuant to [section 179(2)(r)].

NEW SECTION. **Section 187.** Appointment of guardian ad litem. (1) The court may, on its own motion or on request of a trustee or other person interested in the trust, appoint a guardian ad litem at any stage of a proceeding concerning the trust to represent the interest of any of the following persons, if the court determines that representation of the interest otherwise would be inadequate:

(a) a minor;

(b) an incapacitated person;

(c) an unborn person;

(d) an unascertained person;

(e) a person whose identity or address is unknown; or

(f) a designated class of persons who are not ascertained or are not in being.

(2) If not precluded by a conflict of interest, a guardian ad litem may be appointed to represent several persons or interests.

(3) The reasonable expenses of the guardian ad litem,

including compensation and attorney's fees, shall be determined by the court and paid as the court orders, either out of trust property or by the petitioner.

(4) If no guardian ad litem is appointed, an unborn person or an unascertained person is bound by an order to the extent his or her interest is adequately represented by another party having a substantially identical interest in the proceeding.

NEW SECTION. **Section 188.** Intermittent judicial intervention in trust administration. The administration of trusts is intended to proceed expeditiously and free of judicial intervention, subject to the jurisdiction of the court.

NEW SECTION. **Section 189.** Enforcement of beneficiary's rights under charitable trust by attorney general. In a case involving a charitable trust subject to the jurisdiction of the attorney general, the attorney general may petition under [sections 165 through 203].

NEW SECTION. **Section 190.** Application of part. (1) [Sections 190 through 195] apply to all of the following:

(a) a trust that is subject to [sections 1 through 215]; and

(b) any other trust to which the provisions of [sections 165 through 203] are made applicable by statute or trust instrument.

(2) [Sections 190 through 195] do not prevent the transfer of the place of administration of a trust or of trust property to another jurisdiction by any other available means.

NEW SECTION. **Section 191.** **Transfer of place of administration or property from Montana.** (1) The court may make an order for the transfer of the place of administration of a trust or the transfer of some or all of the trust property to a jurisdiction outside this state as provided in [sections 165 through 203].

(2) Except as otherwise provided in [sections 190 through 195], proceedings under [sections 165 through 203] are governed by [sections 190 through 195].

NEW SECTION. **Section 192.** **Contents of petition.** The petition for transfer shall set forth all of the following:

(1) the names and places of residence of the following:

(a) the trustee administering the trust in this state; and

(b) the trustee, including any domiciliary trustee, who will administer the trust or trust property in the other jurisdiction;

(2) the names, ages, and places of residence of the living beneficiaries, as far as known to the petitioner;

(3) whether the trustee who will administer the trust

in the other jurisdiction has agreed to accept the trust. If so, the acceptance or a copy shall be attached as an exhibit to the petition or otherwise filed with the court;

(4) a general statement of the qualifications of the trustee who will administer the trust in the other jurisdiction and the amount of fiduciary bond, if any. If the trustee is an individual, the statement shall include the trustee's age;

(5) a general statement of the nature and value of the property of any trust of the same trustor being administered in the other jurisdiction by the trustee who will administer the trust in the other jurisdiction;

(6) the name of the court, if any, having jurisdiction of the trustee in the other jurisdiction or of its accounts or in which a proceeding may be had with respect to administration of the trust or the trustee's accounts;

(7) a statement of the character, condition, location, and value of the trust property sought to be transferred;

(8) whether there is any pending civil action in this state against the trustee arising out of the administration of the trust sought to be transferred; and

(9) a statement of the reasons for the transfer.

NEW SECTION. **Section 193.** **Notice and hearing.** (1) At least 14 days before the time set for the hearing on the petition, the petitioner shall cause notice of the time and

place of the hearing to be mailed to each of the persons named in the petition at their respective addresses as stated in the petition.

(2) Any person interested in the trust, as trustee, beneficiary, or otherwise, may appear and file written grounds in opposition to the petition.

NEW SECTION. **Section 194.** **Order granting transfer.** The court may, in its discretion, grant the petition and order the trustee to transfer the trust property or to transfer the place of administration of the trust to the other jurisdiction if, after hearing, all of the following appear to the court:

(1) the transfer of the trust property to a trustee in another jurisdiction, or the transfer of the place of administration of the trust to another jurisdiction, will promote the best interests of the trust and those interested in it, taking into account the interest in the economical and convenient administration of the trust;

(2) the transfer will not violate the trust instrument; and

(3) any new trustee to whom the trust property is to be transferred is qualified, willing, and able to administer the trust or trust property under the trust instrument.

NEW SECTION. **Section 195.** **Manner of transfer -- discharge of trustee.** If a transfer is ordered under this

chapter, the court may direct the manner of transfer and impose terms and conditions as may be just, including, but not limited to, a requirement for the substitution of a successor trustee in any pending litigation in this state. The delivery of property in accordance with the order of the court is a discharge of the trustee in relation to all property embraced in the order.

NEW SECTION. **Section 196.** **Application.** (1) [Sections 196 through 203] apply to a trust, or portion thereof, administered in a jurisdiction outside this state.

(2) [Sections 196 through 203] do not prevent the transfer of the place of administration of a trust or trust property to this state by any other available means.

NEW SECTION. **Section 197.** **Transfer of place of administration or property to Montana.** (1) The court may make an order accepting the transfer of the place of administration of a trust from another jurisdiction to this state or the transfer of some or all of the trust property in another jurisdiction to a trustee in this state as provided in [sections 196 through 203].

(2) Except as otherwise provided in [sections 196 through 203], proceedings under [sections 196 through 203] are governed by this chapter.

NEW SECTION. **Section 198.** **Venue.** (1) If the petition requests that a resident of this state be appointed trustee,

the petition shall be filed in the court of the county where the proposed principal place of administration of the trust pursuant to [section 167] is located.

(2) If the petition requests that only a nonresident of this state be appointed trustee, the petition shall be filed in the court of the county where either:

(a) any beneficiary resides; or

(b) a substantial portion of the trust property to be transferred is located or will be located.

NEW SECTION. **Section 199.** Contents of petition. The petition for transfer shall set forth all of the following:

(1) the names and places of residence of the following:

(a) the trustee administering the trust in the other jurisdiction; and

(b) the proposed trustee to whom administration of the trust or trust property will be transferred;

(2) the names, ages, and places of residence of all living beneficiaries, as far as known to the petitioner;

(3) whether administration of the trust has been subject to supervision in a jurisdiction outside this state. If so, the petition shall state whether a petition or appropriate request for transfer of place of administration of the trust or trust property to this state has been filed, if necessary, with the court in the other jurisdiction, and

the status of the petition or request.

(4) whether the trustee proposed to administer the trust in this state has agreed to accept the trust in this state. If the trustee has agreed, the acceptance shall be attached as an exhibit to the petition or otherwise filed with the court.

(5) a general statement of the qualifications of the trustee proposed to administer the trust in this state and the amount of any bond to be requested. If the trustee is an individual, the statement shall include the trustee's age.

(6) a copy of the trust instrument or a statement of the terms of the trust instrument in effect at the time the petition is filed, including all amendments thereto;

(7) a statement of the character, condition, location, and value of the trust property sought to be transferred; and

(8) a statement of the reasons for the transfer.

NEW SECTION. **Section 200.** Notice and hearing. (1) At least 14 days before the time set for the hearing on the petition, the petitioner shall cause notice of the time and place of the hearing to be mailed to each of the persons named in the petition at their respective addresses as stated in the petition.

(2) Any person interested in the trust, as trustee, beneficiary, or otherwise, may appear and file written

grounds in opposition to the petition.

NEW SECTION. **Section 201.** Order accepting transfer and appointing trustee. (1) The court may, in its discretion, grant the petition and issue an order accepting transfer of trust property or the place of administration of the trust to this state and appoint a trustee to administer the trust in this state, if, after hearing, all of the following appear to the court:

(a) the transfer of the trust property to a trustee in this state, or the transfer of the place of administration of the trust to this state, will promote the best interests of the trust and those interested in it, taking into account the interest in the economical and convenient administration of the trust;

(b) the transfer will not violate the trust instrument;

(c) the trustee appointed by the court to administer the trust in this state, and to whom the trust property is to be transferred, is qualified, willing, and able to administer the trust or trust property under the trust instrument; and

(d) the proper court in the other jurisdiction has approved the transfer if approval is necessary under the law of the other jurisdiction.

(2) If the court grants the petition under subsection

(1), the court shall require the trustee to give a bond, if necessary under the law of the other jurisdiction or of this state, and may require bond as provided in [section 49].

NEW SECTION. **Section 202.** Conditional order accepting transfer. If appropriate to facilitate transfer of the trust property or the place of administration of a trust to this state, the court may issue a conditional order appointing a trustee to administer the trust in this state and indicating that transfer to this state will be accepted if transfer is approved by the proper court of the other jurisdiction.

NEW SECTION. **Section 203.** Administration of transferred trust. A trust transferred to this state pursuant to [sections 165 through 203] shall be administered in the same manner as a trust of that type created in this state.

NEW SECTION. **Section 204.** Personal liability of trustee to third persons on contracts. (1) Unless otherwise provided in the contract or in [sections 165 through 203], a trustee is not personally liable on a contract properly entered into in the trustee's fiduciary capacity in the course of administration of the trust unless the trustee fails to reveal the trustee's representative capacity or identify the trust in the contract.

(2) The personal liability of a trustee on a contract entered into before October 1, 1989, is governed by prior

law and not by this section.

NEW SECTION. **Section 205. Personal liability of trustee arising from ownership or control of trust estate.** A trustee is personally liable for obligations arising from ownership or control of trust property only if the trustee is personally at fault.

NEW SECTION. **Section 206. Personal liability of trustee for torts.** A trustee is personally liable for torts committed in the course of administration of the trust only if the trustee is personally at fault.

NEW SECTION. **Section 207. Liability of dissenting cotrustee to third persons.** (1) A cotrustee who does not join in exercising a power held by three or more cotrustees is not liable to third persons for the consequences of the exercise of the power.

(2) A dissenting cotrustee who joins in an action at the direction of the majority cotrustees is not liable to third persons for the action if the dissenting cotrustee expresses the dissent in writing to any other cotrustee at or before the time the action is taken.

(3) This section does not excuse a cotrustee from liability for failure to discharge the cotrustee's duties as a trustee.

NEW SECTION. **Section 208. Assertion of claims against trust.** A claim based on a contract entered into by a trustee

in the trustee's representative capacity, on an obligation arising from ownership or control of trust property, or on a tort committed in the course of administration of the trust may be asserted against the trust by proceeding against the trustee in the trustee's representative capacity, whether or not the trustee is personally liable on the claim.

NEW SECTION. **Section 209. Liability as between trustee and trust estate.** The question of liability as between the trust estate and the trustee personally may be determined in a proceeding under [section 179].

NEW SECTION. **Section 210. Protection of third person dealing with trustee.** With respect to a third person dealing with a trustee or assisting a trustee in the conduct of a transaction, if the third person acts for a valuable consideration and without actual knowledge that the trustee is exceeding the trustee's powers or improperly exercising them:

(1) the third person is not bound to inquire whether the trustee has power to act or is properly exercising a power and may assume without inquiry the existence of a trust power and its proper exercise; and

(2) the third person is fully protected in dealing with or assisting the trustee just as if the trustee has and is properly exercising the power the trustee purports to exercise.

NEW SECTION. **Section 211. Application of property delivered to trustee by third person.** A third person is not bound to ensure the proper application of trust property paid or delivered to the trustee.

NEW SECTION. **Section 212. Protection of third person dealing with former trustee.** If a third person acting for a valuable consideration enters into a transaction with a former trustee without knowledge that the person is no longer a trustee, the third person is fully protected just as if the former trustee were still a trustee.

NEW SECTION. **Section 213. Effects on real property transactions.** (1) This section relates only to conveyances of real property to or from a trust, and supplements, but does not modify other substantive provisions of [sections 1 through 215] relating to the creation or validity of trusts. This section does not affect conveyances recorded prior to October 1, 1989.

(2) Except as otherwise provided in [sections 1 through 215], a conveyance of real property to a trustee designated as such in the conveyance vests the whole estate conveyed in the trustee, subject only to the trustee's duties. The beneficiaries of the trust take no estate or interest in the real property, but may determine or enforce the terms of the trust as provided in [sections 1 through 215].

(3) An instrument creating or amending a trust need not be recorded, but may be if properly acknowledged.

(4) If there is no clear reference to or designation of a grantee as trustee in a conveyance (nor in a separately recorded instrument recorded in the same county as the conveyance and describing the same property as described in the conveyance), the conveyance shall be considered to be absolute to the grantee, in favor of purchasers or encumbrancers from the grantee, who were without actual knowledge and who acted for a valuable consideration, despite any valid trust which may exist.

(5) Unless limitations upon a trustee's power or authority are set forth in the recorded conveyance of real property to the trustee or in a separate trust instrument (or portion thereof, or abstract thereof) recorded in the same county, there are no limitations upon the trustee's power or authority to convey or encumber the real property in favor of third persons who were without actual knowledge and who acted for a valuable consideration. A separate trust instrument incorporated by reference in a conveyance to a trustee cannot limit the trustee's power or authority to convey or encumber unless the limitations are set forth in the trust instrument (or portion thereof or abstract thereof) which is also recorded in the county where the real property is located. An amendment to a recorded trust

instrument may not affect the power or authority of a trustee to convey or encumber unless it is also recorded in the same place.

(6) A subsequent conveyance from a person designated in the original conveyance as trustee (or from his successor trustee) conveys the whole estate vested in the trustee, except as limited by the terms of the conveyance. The identity of any successor trustee may be established by a recorded affidavit of the successor trustee specifying his name and address and the date and circumstances of his succession, and confirming that he is currently lawfully serving in such capacity.

(7) In an action or proceeding by a third person involving the real property granted to a trustee, the person designated as trustee in the original conveyance, or the successor trustee as established in subsection (6), or, if none, the person then actually serving as trustee, or, if none, any beneficiary designated by the court to represent the interests of the beneficiaries, shall be considered the only necessary representative of the trust and of all persons with an interest therein. A judgment is binding upon and conclusive against the trust and all persons interested therein as to all matters finally adjudicated in the judgment.

NEW SECTION. **Section 214.** Creditor's rights against

revocable trust during trustor's lifetime. If the trustor retains the power to revoke the trust in whole or in part, the trust property is subject to the claims of creditors of the trustor to the extent of the power of revocation during the lifetime of the trustor.

NEW SECTION. **Section 215.** Creditor's rights against revocable trust after trustor's death. Upon the death of a trustor who had retained the power to revoke the trust in whole or in part, the property that was subject to the power of revocation at the time of the trustor's death is subject to the claims of creditors of the decedent trustor's estate and to the expenses of administration of the estate to the extent that the decedent trustor's estate is inadequate to satisfy those claims and expenses.

Section 216. Section 2-2-103, MCA, is amended to read:

"**2-2-103. Public trust.** (1) The holding of public office or employment is a public trust, created by the confidence which the electorate reposes in the integrity of public officers, legislators, and employees. A public officer, legislator, or employee shall carry out his duties for the benefit of the people of the state.

(2) A public officer, legislator, or employee whose conduct departs from his fiduciary duty is liable to the people of the state as a trustee of property, is liable to a beneficiary under ~~72-20-203(2)~~ [section 77], and shall

suffer such other liabilities as a private fiduciary would suffer for abuse of his trust. The county attorney of the county where the trust is violated may bring appropriate judicial proceedings on behalf of the people. Any moneys collected in such actions shall be paid to the general fund of the aggrieved agency.

(3) The following sections set forth various rules of conduct, the transgression of any of which is, as such, a violation of fiduciary duty, and various ethical principles, the transgression of any of which is not, as such, a violation of fiduciary duty."

Section 217. Section 31-2-209, MCA, is amended to read:

"31-2-209. Assignment -- when void. An assignment for the benefit of creditors is void against any creditor of the assignor not assenting thereto in the following cases:

(1) if it gives a preference dependent upon any condition or contingency or with any power of revocation reserved;

(2) if it tends to coerce any creditor to release or compromise his demand;

(3) if it provides for the payment of any claim known by the assignor to be false or fraudulent or for the payment of more upon any claim than is known to be justly due from the assignor;

(4) if it reserves any interest in the assigned property or in any part thereof to the assignor or for his benefit, before all existing debts are paid;

(5) if it confers upon the assignee any power which, if exercised, might prevent or delay the immediate conversion of the assigned property to the purposes of the trust;

(6) if it exempts him from liability for neglect of duty or misconduct;

(7) if it violates ~~72-28-203(1)~~ [section 77]."

Section 218. Section 70-20-101, MCA, is amended to read:

"70-20-101. Transfer to be in writing -- statute of frauds. No estate or interest in real property, other than an estate at will or for a term not exceeding 1 year, ~~or any trust over or power concerning it or in any manner relating thereto~~ can be created, granted, assigned, surrendered, or declared otherwise than by operation of law or a conveyance or other instrument in writing, subscribed by the party creating, granting, assigning, surrendering, or declaring it or by his lawful agent thereunto authorized by writing."

Section 219. Section 82-1-304, MCA, is amended to read:

"82-1-304. Administration of the trust. (1) The administration of the trust shall comply with the

appropriate provisions regulating trusts contained in Title 72.

(2) No trustee or attorney fees may be paid from the trust proceeds.

(3) All bonuses, rental payments, royalties, and other income shall be paid to the trustee until the trust is terminated and notice of its termination given to all interested parties. The trustee shall distribute all money held in the trust to the person or persons entitled to it upon the order of the district court.

(4) A trust in favor of unlocatable owners shall be in force until the unlocatable owners of the mineral interest in question have successfully claimed the share of funds held in trust and filed the notice provided in 82-1-306.

(5) The trustee shall invest funds under his management in the manner of a prudent man, as ~~defined--in 72-21-104~~ provided in [section 89]. Fifty percent of the interest earned on each trust shall be credited to the general fund of the county in which the mineral interest is located to defray the costs of administration.

(6) Funds held in the trusts are subject to the provisions governing abandoned property contained in Title 70, chapter 9."

NEW SECTION. **Section 220.** Repealer. Sections 72-12-101 through 72-12-103, Title 72, chapters 20 through

25, sections 72-27-101 and 72-27-102, MCA, are repealed.

NEW SECTION. **Section 221.** Codification instruction. [Sections 1 through 215] are intended to be codified as an integral part of Title 72 and the provisions of Title 72 apply to [sections 1 through 215].

-End-

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Free Conference Committee Report
on SB 333
Report No. 1, April 5, 1989
page 1 of 2

Mr President and Mr. Speaker:

We, your Free Conference Committee on SB 333 met and considered:

The House Committee of the Whole amendments to SB 333 (third reading copy -- blue) dated March 9, 1989.

We recommend that the House Committee of the Whole amendments be rejected and that SB 333 (reference copy -- salmon) be amended as follows:

1. Page 49, lines 3 through 16.
Strike: "IF" on line 3 through "CUSTODIAN" on line 16
Insert: "In the absence of an express provision to the contrary in a trust instrument, whenever the instrument directs or permits investment in obligations of the United States government, the trustee has the power to invest in those obligations directly or in the form of securities or other interests in an open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1040 (15 U.S.C. 80a-1 through 80a-64), as amended, or an investment vehicle authorized for the collective investment of trust funds pursuant to section 9.18 of Title 12 of the Code of Federal Regulations, if:

(1) the portfolio of the investment company, investment trust, or investment vehicle is limited to United States government obligations and repurchase agreements fully collateralized by United States government obligations; and

(2) the investment company, investment trust, or investment vehicle takes delivery of the collateral for any repurchase agreement, either directly or through an authorized custodian"

continued

And that this Conference Committee Report be adopted.

FOR THE SENATE

Sen. Crippen, Chairman

Sen. Bishop

Sen. Mazurek

FOR THE HOUSE

Rep. Spaeth

Rep. Addy

Rep. Mercer

ADOPT

REJECT

SB 333

SB 0333/04

SENATE BILL NO. 333

INTRODUCED BY MAZUREK, CRIPPEN, BISHOP

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAWS RELATING TO TRUSTS AND TRUSTEES; AMENDING SECTIONS 2-2-103, 31-2-209, 70-20-101, AND 82-1-304, MCA; AND REPEALING SECTIONS 72-12-101 THROUGH 72-12-103, TITLE 72, CHAPTERS 20 THROUGH 25, AND SECTIONS 72-27-101 AND 72-27-102, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1.** Short title. [Sections 1 through 215] shall be known and may be cited as the "Trust Code".

NEW SECTION. **Section 2.** General rule concerning application of trust code. Except as otherwise provided by statute:

(1) After September 30, 1989, [sections 1 through 215] apply to all trusts regardless of when they were created, unless in the opinion of the court, application of a particular provision of [sections 1 through 215] would substantially interfere with the rights of the parties and other interested persons, in which case the particular provision of [sections 1 through 215] does not apply and prior law applies.

(2) After September 30, 1989, [sections 1 through 215] apply to all proceedings concerning trusts whenever commenced, unless in the opinion of the court, application of a particular provision of [sections 1 through 215] would substantially interfere with the effective conduct of the proceedings or the rights of the parties and other interested persons, in which case the particular provision of [sections 1 through 215] does not apply and prior law applies.

NEW SECTION. **Section 3.** Common law as law of state. Except to the extent that the common law rules governing trusts are modified by statute, the common law as to trusts is the law of this state.

NEW SECTION. **Section 4.** Constructive and resulting trusts not affected. Other than [sections 19 through 23], nothing in [sections 1 through 215] affects the law relating to constructive or resulting trusts.

NEW SECTION. **Section 5.** Application of code to charitable trusts. Unless otherwise provided by statute, [sections 1 through 215] apply to charitable trusts that are subject to the jurisdiction of the attorney general.

NEW SECTION. **Section 6.** Laws affecting construction and operation of wills apply to trusts. (1) Title 72, chapter 2, part 5 and 72-3-901 apply to the construction and operation of trusts, except as provided in subsection (2).

REFERENCE BILL: Includes Free Conference Committee Report Dated 4-5-89

(2) This section does not apply to any trust if its terms expressly or by necessary implication make this section inapplicable to it.

(3) For purposes of [sections 1 through 215], references in Title 72, chapter 2, part 5 and in 72-3-901 to a "testator" refer to the trustor, references to a "will" refer to a trust, references to a "devisee" refer to a trust beneficiary, and references to a "devise" refer to a trust distribution.

NEW SECTION. **Section 7.** Definitions. As used in [sections 1 through 215] unless the context requires otherwise the following definitions apply:

(1) "Beneficiary" means a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer and, as it relates to a charitable trust, includes any person entitled to enforce the trust.

(2) "Person" means an individual, a corporation, an organization, or other legal entity.

(3) "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.

(4) "Trust" when not qualified by the word "resulting" or "constructive", includes any express trust, private or charitable, with additions thereto, wherever and however

created. It also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. The term does not include conservatorships, personal representatives, custodial arrangements pursuant to chapter 26 of this title, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind and any arrangement under which a person is nominee or escrowee for another.

(5) "Trustee" means the person holding property in trust. The term includes an original, additional, or successor trustee, whether or not appointed or confirmed by a court.

(6) "Trustor" means the person who creates a trust.

(7) "Trust company" means an entity which has qualified to engage in and conduct a trust business in this state.

(8) "Trust property" means the property held in trust.

NEW SECTION. **Section 8.** Reference to statutes -- amendments and additions. Whenever a reference is made to any portion of [sections 1 through 215] or to any other law, the reference applies to all amendments and additions made.

NEW SECTION. **Section 9.** Methods of creating trust. Subject to other provisions of [sections 1 through 72], a trust may be created by any of the following methods:

(1) a declaration by the owner of property that the owner holds the property as trustee;

(2) a transfer of property by the owner during the owner's lifetime to another person as trustee;

(3) a testamentary transfer of property by the owner to another person as trustee;

(4) an exercise of a power of appointment to another person as trustee; or

(5) an enforceable promise to create a trust.

NEW SECTION. **Section 10.** Intention to create trust. A trust is created only if the trustor properly manifests an intention to create a trust.

NEW SECTION. **Section 11.** Trust property. (1) A trust is created only if there is trust property.

(2) The requirement of subsection (1) may be satisfied if the trust (or its trustee) is designated to be beneficiary of the proceeds of an insurance contract, an annuity contract, an employee benefit plan, an individual retirement account, or similar device, even though the designation may be revoked.

NEW SECTION. **Section 12.** Trust purpose. A trust may be created for any purpose that is not illegal or against

public policy.

NEW SECTION. **Section 13.** Trust for indefinite or general purposes. A trust created for an indefinite or general purpose is not invalid for that reason if it can be determined with reasonable certainty that a particular use of the trust property comes within that purpose.

NEW SECTION. **Section 14.** Designation of beneficiary. (1) A trust, other than a charitable trust, is created only if there is a beneficiary.

(2) The requirement of subsection (1) is satisfied if the trust instrument provides for either of the following:

(a) a beneficiary or class of beneficiaries that is ascertainable with reasonable certainty or that is sufficiently described so it can be determined that some person meets the description or is within the class; or

(b) a grant of power to the trustee or some other person to select the beneficiaries based on a standard or in the discretion of the trustee or other person.

NEW SECTION. **Section 15.** Designation of trust or trustee as beneficiary. (1) A trust or trustee may be designated as the beneficiary of the proceeds of an insurance contract, an annuity contract, an employee benefit plan, an individual retirement account, or similar device if the designation is made in accordance with the contract, plan, account, or device.

(2) Subsection (1) applies even though the trust or trustee is named or to be named by will or trust and whether or not the will or trust is in existence at the time of the designation.

NEW SECTION. **Section 16.** Statute of frauds. A trust is not valid unless evidenced by one of the following methods:

(1) by a written instrument signed by the trustee, or by the trustee's agent if authorized in writing to do so;

(2) by a written instrument signed by the trustor, or by the trustor's agent if authorized in writing to do so; or

(3) by operation of law.

NEW SECTION. **Section 17.** Consideration. Consideration is not required to create a trust, but a promise to create a trust in the future is enforceable only if the requirements for an enforceable contract are satisfied.

NEW SECTION. **Section 18.** Exception to doctrine of merger. If a trust provides for one or more successor beneficiaries after the death of the trustor, the trust is not invalid, merged, or terminated in either of the following circumstances:

(1) where there is one trustor who is the sole trustee and the sole beneficiary during the trustor's lifetime; or

(2) where there are two or more trustors, one or more of whom are trustees, and the beneficial interest in the

trust is in one or more of the trustors during the lifetime of the trustors.

NEW SECTION. **Section 19.** Resulting trust upon failure of trust. Where the owner of property gratuitously transfers it and manifests in the trust instrument an intention that the transferee should hold the property in trust but the trust fails, the transferee holds the trust estate as a resulting trust for the transferor or his estate, unless:

(1) the transferor manifested in the trust instrument an intention that no resulting trust should arise; or

(2) the intended trust fails for illegality and the policy against unjust enrichment of the transferee is outweighed by the policy against giving relief to a person who has entered into an illegal transaction.

NEW SECTION. **Section 20.** Resulting trust upon full performance of trust. Where the owner of property gratuitously transfers it subject to a trust which is properly declared and which is fully performed without exhausting the trust estate, the trustee holds the surplus as a resulting trust for the transferor or his estate, unless the transferor manifested in the trust instrument an intention that no resulting trust of the surplus should arise.

NEW SECTION. **Section 21.** Purchase money resulting trust. (1) Where a transfer of property is made to one

person and the purchase price is paid by another, a resulting trust arises in favor of the person who paid the purchase price.

(2) Subsection (1) does not apply in any of the following circumstances:

(a) whenever the party paying the purchase price manifests an intention that no resulting trust should arise;

(b) whenever the transferee is a spouse, child, or other natural object of the bounty of the person who paid the purchase price; or

(c) whenever the transfer is made in order to accomplish an illegal purpose and the policy against unjust enrichment of the transferee is outweighed by the policy against giving relief to a person who has entered into an illegal transaction.

(3) Subsection (2)(b) does not apply if the party paying the purchase price manifested an intention that the transferee should not have the beneficial interest in the property.

NEW SECTION. **Section 22.** Constructive trust. A constructive trust arises when a person holding title to property is subject to an equitable duty to convey it to another on the ground that the person holding title would be unjustly enriched if he were permitted to retain it.

NEW SECTION. **Section 23.** Resulting trusts,

constructive trusts -- statute of frauds. Resulting trusts and constructive trusts are considered to arise by operation of law and are valid under [section 16(3)].

NEW SECTION. **Section 24.** Restraint on transfer of income. Except as provided in [section 28], if the trust instrument provides that a beneficiary's interest is not subject to voluntary or involuntary transfer, the beneficiary's interest in income under the trust may not be transferred and is not subject to enforcement of a money judgment until paid to the beneficiary.

NEW SECTION. **Section 25.** Restraint on transfer of principal. (1) Except as provided in subsection (2) and in [section 28], if the trust instrument provides that a beneficiary's interest in principal is not subject to voluntary or involuntary transfer, the beneficiary's interest in principal may not be transferred and is not subject to enforcement of a money judgment until paid to the beneficiary.

(2) After an amount of principal has become due and payable to the beneficiary under the trust instrument, upon petition to the court by a judgment creditor, the court may make an order directing the trustee to satisfy the money judgment out of that principal amount. The court in its discretion may issue an order directing the trustee to satisfy all or part of the judgment out of that principal

amount.

NEW SECTION. **Section 26. Trust for support.** Except as provided in [section 28], if the trust instrument provides that the trustee shall pay income or principal or both for the education or support of a beneficiary, the beneficiary's interest in income or principal or both under the trust may not be transferred and is not subject to the enforcement of a money judgment until paid to the beneficiary.

NEW SECTION. **Section 27. Transferee or creditor cannot compel trustee to exercise discretion -- liability of trustee for payment to or for beneficiary.** (1) If the trust instrument provides that the trustee shall pay to or for the benefit of a beneficiary so much of the income or principal or both as the trustee in the trustee's discretion sees fit to pay, a transferee or creditor of the beneficiary may not compel the trustee to pay any amount that may be paid only in the exercise of the trustee's discretion.

(2) If the trustee has knowledge of the transfer of the beneficiary's interest or has been served with process by a judgment creditor seeking to reach the beneficiary's interest, and the trustee pays to or for the benefit of the beneficiary any part of the income or principal that may be paid only in the exercise of the trustee's discretion, the trustee is liable to the transferee or creditor to the extent that the payment to or for the benefit of the

beneficiary impairs the right of the transferee or creditor. This subsection does not apply if the beneficiary's interest in the trust is subject to a restraint on transfer that is valid under [section 24 or 25].

(3) This section applies regardless of whether the trust instrument provides a standard for the exercise of the trustee's discretion.

(4) Nothing in this section limits any right the beneficiary may have to compel the trustee to pay to or for the benefit of the beneficiary all or part of the income or principal.

NEW SECTION. **Section 28. Where trustor is beneficiary.** (1) If the trustor is a beneficiary of a trust created by the trustor and the trustor's interest is subject to a provision restraining the voluntary or involuntary transfer of the trustor's interest, the restraint is invalid against transferees or creditors of the trustor. The invalidity of the restraint on transfer does not affect the validity of the trust.

(2) If the trustor is the beneficiary of a trust created by the trustor and the trust instrument provides that the trustee shall pay income or principal or both for the education or support of the beneficiary or gives the trustee the discretion to determine the amount of income or principal or both to be paid to or for the benefit of the

trustor, a transferee or creditor of the trustor may reach the maximum amount that the trustee could pay to or for the benefit of the trustor under the trust instrument, not exceeding the amount of the trustor's proportionate contribution to the trust.

NEW SECTION. **Section 29.** Disclaimer not a transfer. A disclaimer or renunciation by a beneficiary of all or part of his interest under a trust shall not be considered a transfer under [section 24 or 25].

NEW SECTION. **Section 30.** Presumption of revocability. Unless a trust is expressly made irrevocable by the trust instrument, the trust is revocable by the trustor. This section applies only where the trustor is domiciled in this state when the trust is created, where the trust instrument is executed in this state, or where the trust instrument provides that the law of this state governs the trust.

NEW SECTION. **Section 31.** Method of revocation by trustor. (1) A trust that is revocable by the trustor may be revoked in whole or in part by any of the following methods:

(a) by compliance with any method of revocation provided in the trust instrument; or

(b) by a writing (other than a will) signed by the trustor and delivered to the trustee during the lifetime of the trustor. If the trust instrument explicitly makes the method of revocation provided in the trust instrument the

exclusive method of revocation, the trust may not be revoked pursuant to this subsection.

(2) A trust may not be revoked by an attorney-in-fact under a power of attorney unless it is expressly permitted by the trust instrument.

(3) Nothing in this section limits the authority to modify or terminate a trust pursuant to [section 33 or 34] in an appropriate case.

(4) The manner of revocation of a trust revocable by the trustor that was created by an instrument executed before October 1, 1989, is governed by prior law and not by this section.

NEW SECTION. **Section 32.** Power to revoke includes power to modify. Unless the trust instrument provides otherwise, if a trust is revocable by the trustor, the trustor may modify the trust by the procedure for revocation.

NEW SECTION. **Section 33.** Modification or termination of irrevocable trust by all beneficiaries. (1) Except as provided in subsection (2), if all beneficiaries of an irrevocable trust consent, they may compel modification or termination of the trust upon petition to the court.

(2) If the continuance of the trust is necessary to carry out a material purpose of the trust, the trust cannot be modified or terminated unless the court, in its

discretion, determines that the reason for doing so under the circumstances outweighs the interest in accomplishing a material purpose of the trust. Under this section the court does not have discretion to permit termination of a trust that is subject to a valid restraint on transfer of the beneficiary's interest as provided in [sections 24 through 29].

NEW SECTION. **Section 34. Modification or termination by trustor and all beneficiaries.** (1) If the trustor and all beneficiaries of a trust consent, they may compel the modification or termination of the trust.

(2) If any beneficiary does not consent to the modification or termination of the trust, upon petition to the court, the other beneficiaries, with the consent of the trustor, may compel a modification or a partial termination of the trust if the interests of the beneficiaries who do not consent are not substantially impaired.

(3) If the trust provides for the disposition of principal to a class of persons described only as "heirs" or "next of kin" of the trustor, or using other words that describe the class of all persons who would take under the rules of intestacy, the court may limit the class of beneficiaries whose consent is needed to compel the modification or termination of the trust to the beneficiaries who are reasonably likely to take under the

circumstances.

NEW SECTION. **Section 35. Guardian ad litem.** For the purposes of [sections 33 and 34], the consent of a beneficiary who is legally incapacitated, unascertained, or unborn may be given in proceedings before the court by a guardian ad litem, if it would be appropriate to do so. In this case the guardian ad litem may rely on general family benefit accruing to living members of the beneficiary's family as a basis for approving a modification or termination of the trust.

NEW SECTION. **Section 36. No conclusive presumption of fertility.** In determining the class of beneficiaries whose consent is necessary to modify or terminate a trust pursuant to [section 33 or 34], the presumption of fertility is rebuttable.

NEW SECTION. **Section 37. Termination of trusts -- trustee's powers on termination.** (1) A trust terminates when any of the following occurs:

(a) the term of the trust expires;

(b) the trust purpose is fulfilled;

(c) the trust purpose becomes unlawful;

(d) the trust purpose becomes impossible to fulfill; or

(e) the trust is revoked.

(2) On termination of the trust, the trustee continues

to have the powers reasonably necessary under the circumstances to wind up the affairs of the trust.

NEW SECTION. **Section 38.** **Trust with uneconomically low principal.** (1) On petition by a trustee or beneficiary, if the court determines that the fair market value of the principal of a trust has become so low in relation to the cost of administration that continuation of the trust under its existing terms will defeat or substantially impair the accomplishment of its purposes, the court may, in its discretion and in a manner that conforms as nearly as possible to the intention of the trustor, order any of the following:

(a) termination of the trust;

(b) modification of the trust; or

(c) appointment of a new trustee.

(2) Notwithstanding subsection (1), if the trust principal does not exceed $20,000 in value, the trustee has the power to terminate the trust.

(3) The existence of a trust provision restraining transfer of the beneficiary's interest does not prevent application of this section.

NEW SECTION. **Section 39.** **Modification or termination.** (1) On petition by a trustee or beneficiary, the court may modify the administrative or dispositive provisions of the trust or terminate the trust if the continuation of the

trust under its terms would defeat or substantially impair the accomplishment of the purposes of the trust, whether by the imposition of tax, the allocation of beneficial interest inconsistent with such purposes, or by other reason. In this case, if necessary to carry out the purposes of the trust, the court may order the trustee to do acts that are not authorized or are forbidden by the trust instrument.

(2) The court shall consider a trust provision restraining transfer of the beneficiary's interest as a factor in making its decision whether to modify or terminate the trust, but the court is not precluded from exercising its discretion to modify or terminate the trust solely because of a restraint on transfer.

NEW SECTION. **Section 40.** **Disposition of property upon termination.** At the termination of a trust, the trust property shall be disposed of as follows:

(1) In the case of a trust that is revoked by the trustor, as directed by the trustor.

(2) In the case of a trust that is terminated by the consent of the trustor and all beneficiaries, as agreed by the trustor and all beneficiaries.

(3) In any other case, as provided in the trust instrument or in a manner directed by the court that conforms as nearly as possible to the intention of the trustor as expressed in the trust instrument. If a trust is

terminated by the trustee pursuant to [section 38(2)], the trust property shall be distributed as determined by the trustee pursuant to this subsection.

NEW SECTION. **Section 41. Combination of similar trusts.** If the terms of two or more trusts are substantially similar, on petition by a trustee or beneficiary, the court, for good cause shown, may combine the trusts if the court determines that administration as a single trust will not defeat or substantially impair the accomplishment of the trust purposes or the interests of the beneficiaries.

NEW SECTION. **Section 42. Division of trusts.** On petition by a trustee or beneficiary, the court, for good cause shown, may divide a trust into two or more separate trusts, if the court determines that dividing the trust will not defeat or substantially impair the accomplishment of the trust purposes or the interests of the beneficiaries.

NEW SECTION. **Section 43. Charitable trust.** A charitable trust, or the charitable portion of a trust, subjects the trustee to equitable duties to deal with the trust property for a charitable purpose.

NEW SECTION. **Section 44. Charitable purposes.** Charitable purposes include:

(1) the relief of poverty;

(2) the advancement of education;

(3) the advancement of religion;

(4) the promotion of health;

(5) governmental or municipal purposes; or

(6) other purposes the accomplishment of which are beneficial to the community.

NEW SECTION. **Section 45. Enforcement of a charitable trust.** The attorney general, a cotrustee, or a person who has a special interest in the enforcement of the charitable trust can maintain a suit for the enforcement of a charitable trust, but not persons who have no special interest or the trustor or his heirs or personal representative.

NEW SECTION. **Section 46. Cy pres doctrine.** If property is given in trust to be applied to a particular charitable purpose, and it is or becomes impossible, impracticable, or illegal to carry out the particular purpose, and if the trustor manifested a general intention to devote the property to charitable purposes, the trust need not fail. The court may direct the application of the property to some charitable purpose which falls within the general charitable intention of the trustor.

NEW SECTION. **Section 47. Acceptance of trust by trustee.** (1) The person named as trustee may accept the trust, or a modification of the trust, by one of the following methods:

(a) signing the trust instrument or the trust

instrument as modified, or signing a separate written acceptance; or

(b) knowingly exercising powers or performing duties under the trust instrument or the trust instrument as modified, except as provided in subsection (2).

(2) In a case where there is an immediate risk of damage to the trust property, the person named as trustee may act to preserve the trust property without accepting the trust or a modification of the trust, if within reasonable time after acting the person delivers a written rejection of the trust or the modification of the trust to the trustor or, if the trustor is dead or incompetent, to a beneficiary. This subsection does not impose a duty on the person named as trustee to act.

NEW SECTION. **Section 48.** Rejection of trust -- nonliability of person who rejects trust. (1) A person named as trustee may in writing reject the trust or a modification of the trust.

(2) If the person named as trustee does not accept the trust or a modification of the trust by a method provided in [section 47(1)] within a reasonable time after learning of being named as trustee or of the modification, the person has rejected the trust or the modification.

(3) A person named as trustee who rejects the trust or a modification of the trust is not liable with respect to

the rejected trust or modification.

NEW SECTION. **Section 49.** Trustee's bond. (1) A trustee is not required to give a bond to secure performance of the trustee's duties, unless either of the following circumstances ~~occur~~ OCCURS:

(a) A bond is required by the trust instrument.

(b) Notwithstanding a waiver of bond in the trust instrument, a bond is found by the court to be necessary to protect the interests of beneficiaries.

(2) Notwithstanding subsection (1)(a), the court may excuse a requirement of a bond, reduce or increase the amount of a bond, release a surety, permit the substitution of another bond with the same or different sureties, or accept another form of security.

(3) If a bond is required, it shall be filed or served, in the amount, and with sureties and liabilities as provided in the trust instrument or as ordered by the court.

(4) Except as otherwise provided in the trust instrument or ordered by the court, the cost of the bond shall be charged against the trust.

(5) A trust company may not be required to give a bond, notwithstanding a contrary provision in the trust instrument.

NEW SECTION. **Section 50.** Certificate of trustee. On application by the trustee, the clerk of the district court

shall issue a certificate that the trustee is a duly appointed and acting trustee under the trust if the court file shows the incumbency of the trustee.

NEW SECTION. **Section 51.** **Cotrustees.** (1) Unless otherwise provided in the trust instrument, a power vested in two trustees may only be exercised by their unanimous action.

(2) Unless otherwise provided in the trust instrument, a power vested in three or more trustees may be exercised by a majority of such trustees.

NEW SECTION. **Section 52.** **Vacancy in office of cotrustee.** Unless otherwise provided in the trust instrument, if a vacancy occurs in the office of a cotrustee, the remaining cotrustee or cotrustees may act for the trust as if they are the only trustees.

NEW SECTION. **Section 53.** **Temporary incapacity of cotrustee.** Unless otherwise provided in the trust instrument, if a cotrustee is unavailable to perform the duties of the cotrustee because of absence, illness, or other temporary incapacity, the remaining cotrustee or cotrustees may act for the trust when necessary to accomplish the purposes of the trust or to avoid irreparable injury to the trust property as if they are the only trustees.

NEW SECTION. **Section 54.** **Resignation of the trustee.**

(1) A trustee who has accepted the trust may resign only by one of the following methods:

(a) as provided in the trust instrument;

(b) in the case of a revocable trust, with the consent of the person holding the power to revoke the trust;

(c) in the case of a trust that is not revocable, with the consent of only all of the adult beneficiaries who are receiving or are entitled to receive income under the trust or to receive a distribution of principal if the trust were terminated at the time consent is sought; or

(d) pursuant to a court order obtained as provided in subsection (2).

(2) On petition by the trustee, the court shall accept the trustee's resignation. The court may also make any orders necessary for the preservation of the trust property, including the appointment of a receiver or a temporary trustee.

NEW SECTION. **Section 55.** **Liability upon resignation.** The liability for acts or omissions of a resigning trustee or of the sureties on the trustee's bond, if any, is not released or affected in any manner by the trustee's resignation.

NEW SECTION. **Section 56.** **Removal of a trustee.** (1) A trustee may be removed in accordance with the trust instrument or by the court on its own motion or on petition

of a cotrustee or beneficiary.

(2) The grounds for removal of a trustee by the court include the following:

(a) if the trustee has committed a breach of the trust;

(b) if the trustee is insolvent or otherwise unfit to administer the trust;

(c) if hostility or lack of cooperation among cotrustees impairs the administration of the trust;

(d) if the trustee fails or declines to act; or

(e) for other good cause.

(3) If it appears to the court that trust property or the interests of a beneficiary may suffer loss or injury pending a decision on a petition for removal of a trustee and any appellate review, the court may, on its own motion or on petition of a cotrustee or beneficiary, compel the trustee whose removal is sought to surrender trust property to a cotrustee or to a receiver or temporary trustee. The court may also suspend the powers of the trustee to the extent the court considers necessary.

NEW SECTION. **Section 57. Vacancy in office of trustee.** There is a vacancy in the office of trustee in any of the following circumstances:

(1) The person named as trustee rejects the trust.

(2) The person named as trustee cannot be identified

or does not exist.

(3) The trustee resigns or is removed.

(4) The trustee dies.

(5) A conservator or guardian of an individual trustee is appointed.

(6) A certificate of incorporation of a trust company is revoked or its powers are suspended, if the revocation or suspension is to be in effect for a period of 30 days or more.

(7) A receiver is appointed for a trust company if the appointment is not vacated within a period of 30 days.

NEW SECTION. **Section 58. Delivery of property by former trustee upon occurrence of vacancy.** When a vacancy has occurred in the office of trustee, the former trustee who holds property of the trust shall deliver the trust property to the successor trustee or a person appointed by the court to receive the property and remains responsible for the trust property until it is delivered. A trustee who has resigned or is removed has the powers reasonably necessary under the circumstances to preserve the trust property until it is delivered to the successor trustee and to perform actions necessary to complete the resigning or removed trustee's administration of the trust.

NEW SECTION. **Section 59. Appointment of trustee to fill vacancy.** (1) If the trust has no trustee or if the

trust instrument requires a vacancy in the office of a cotrustee to be filled, the vacancy shall be filled as provided in this section.

(2) If the trust instrument provides a practical method of appointing a trustee or names the person to fill the vacancy, the vacancy shall be filled as provided in the trust instrument.

(3) If the vacancy in the office of trustee is not filled as provided in subsection (2), on petition of a cotrustee or beneficiary the court may, in its discretion, appoint a trustee to fill the vacancy. If the trust provides for more than one trustee, the court may, in its discretion, appoint the original number or any lesser number of trustees. In selecting a trustee, the court shall give consideration to the wishes of the beneficiaries who are 14 years of age or older.

NEW SECTION. **Section 60. Capacity of trustee.** (1) The trustee must have the legal capacity to take, hold, and transfer the trust property. The trustee may be a natural person or a corporation or trust company. If the trustee is a corporation, it must be qualified to act as a trustee in this state.

(2) A beneficiary of a trust may be the trustee of the trust.

(3) The trustor of a trust may be the trustee of the

trust.

NEW SECTION. **Section 61. Trustee's compensation as provided in trust instrument -- different compensation.** (1) Subject to subsection (2), if the trust instrument provides for the trustee's compensation, the trustee is entitled to be compensated in accordance with the trust instrument.

(2) Upon proper showing, the court may fix or allow greater or lesser compensation than could be allowed under the terms of the trust in any of the following circumstances:

(a) whenever the duties of the trustee are substantially different from those contemplated when the trust was created;

(b) whenever the compensation in accordance with the terms of the trust would be inequitable or unreasonably low or high; or

(c) in extraordinary circumstances calling for equitable relief.

(3) An order fixing or allowing greater or lesser compensation under subsection (2) applies only prospectively to actions taken in administration of the trust after the order is made.

NEW SECTION. **Section 62. Trustee's compensation where trust silent.** If the trust instrument does not specify the trustee's compensation, the trustee is entitled to

reasonable compensation.

NEW SECTION. **Section 63. Compensation for services rendered in making temporary investments.** In addition to other compensation to which the trustee is entitled, the trustee is entitled to make a reasonable charge for services rendered in making temporary investments.

NEW SECTION. **Section 64. Court determination of prospective compensation.** The court may fix an amount of periodic compensation under [sections 61 and 62] to continue for as long as the court determines is proper.

NEW SECTION. **Section 65. Compensation of cotrustees.** Unless the trust instrument otherwise provides or the trustees otherwise agree, if the trust has two or more trustees, the compensation shall be apportioned among the cotrustees according to the services rendered by them.

NEW SECTION. **Section 66. Repayment of trustee for expenditures.** A trustee is entitled to the repayment out of the trust property for the following:

(1) expenditures that were properly incurred in the administration of the trust; and

(2) to the extent that they benefited the trust, expenditures that were not properly incurred in the administration of the trust.

NEW SECTION. **Section 67. Trustee's lien.** The trustee has an equitable lien on the trust property as against the

beneficiary in the amount of advances, with any interest, made for the protection of the trust, and for expenses, losses, and liabilities sustained in the administration of the trust or because of ownership or control of any trust property.

NEW SECTION. **Section 68. Limits on rights of beneficiary of revocable trust.** Except to the extent that the trust instrument otherwise provides or where the joint action of the trustor and all beneficiaries is required, during the time that a trust is revocable and the person holding the power to revoke the trust is competent:

(1) The person holding the power to revoke, and not the beneficiary, has the rights afforded beneficiaries under [sections 1 through 215].

(2) The duties of the trustee are owed to the person holding the power to revoke.

NEW SECTION. **Section 69. Consent by beneficiary of revocable trust.** (1) In any case where the consent of a beneficiary may be given or is required to be given before an action may be taken, during the time that a trust is revocable and the person holding the power to revoke the trust is competent, the person holding the power to revoke, and not the beneficiary, has the power to consent or withhold consent.

(2) This section does not apply where the joint

consent of the trustor and all beneficiaries is required by statute.

NEW SECTION. **Section 70. Notice to beneficiary of revocable trust.** Notwithstanding any other statute, during the time that a trust is revocable and the person holding the power to revoke the trust is competent, a notice that is to be given to a beneficiary shall be given to the person holding the power to revoke and not to the beneficiary.

NEW SECTION. **Section 71. Rights of holder of power of appointment or withdrawal.** The holder of a presently exercisable general power of appointment or power to withdraw property from the trust has the rights of a trustor provided by [sections 68 through 70], inclusive, to the extent of the holder's power over the trust property.

NEW SECTION. **Section 72. Notice in case involving future interest of beneficiary.** (1) Subject to subsections (2) and (3), it is sufficient compliance with a requirement in [sections 1 through 215] that notice be given to a beneficiary, or to a person interested in the trust, if notice is given as follows:

(a) Whenever an interest has been limited on any future contingency to persons who will compose a certain class upon the happening of a certain event without further limitation, notice shall be given to the persons in being who would constitute the class if the event had happened

immediately before the commencement of the proceedings.

(b) Whenever an interest has been limited to a living person and the same interest, or a share therein, has been further limited upon the happening of a future event to the surviving spouse or to persons who are or may be the distributees, heirs, issue, or other kindred of the living persons, notice shall be given to the living person.

(c) Whenever an interest has been limited upon the happening of any future event to a person, or a class of persons, or both, and the interest, or a share of the interest, has been further limited upon the happening of an additional future event to another person, or a class of persons, or both, notice shall be given to the person or persons in being who would take the interest upon the happening of the first of these events.

(2) If a conflict of interest involving the subject matter of the trust proceeding exists between a person to whom notice is required to be given and a person to whom notice is not otherwise required to be given under subsection (1), notice shall also be given to persons not otherwise entitled to notice under subsection (1) with respect to whom the conflict of interest exists.

(3) Nothing in this section affects any of the following:

(a) requirements for notice to:

(i) a person who has requested special notice;

(ii) a person who has filed notice of appearance; or

(iii) a particular person or entity required by statute to be given notice.

(b) Availability of a guardian ad litem pursuant to [section 187].

NEW SECTION. **Section 73.** **Duty to administer trust.** On acceptance of the trust, the trustee has a duty to administer the trust according to the trust instrument and, except to the extent the trust instrument provides otherwise, according to [sections 1 through 215].

NEW SECTION. **Section 74.** **Duties of trustee of revocable trust.** (1) Except as provided in subsection (2), the trustee of a revocable trust shall follow any written direction acceptable to the trustee given from time to time:

(a) by the person then having the power to revoke the trust or the part thereof with respect to which the direction is given; or

(b) by the person to whom the trustor delegates the right to direct the trustee.

(2) If a written direction given under subsection (1) would have the effect of modifying the trust, the trustee has no duty to follow the direction unless it complies with the requirements for modifying the trust.

NEW SECTION. **Section 75.** **Duty of loyalty.** (1) The

trustee has a duty to administer the trust solely in the interest of the beneficiaries.

(2) It is not a violation of the duty provided in subsection (1) for a trustee who administers two trusts to sell, exchange, or participate in the sale or exchange of trust property between the trusts, if both of the following requirements are met:

(a) the sale or exchange is fair and reasonable with respect to the beneficiaries of both trusts; and

(b) the trustee gives to the beneficiaries of both trusts notice of all material facts related to the sale or exchange that the trustee knows or should know.

NEW SECTION. **Section 76.** **Duty to deal impartially with beneficiaries.** If a trust has two or more beneficiaries, the trustee has a duty to deal impartially with them.

NEW SECTION. **Section 77.** **Duty to avoid conflict of interest.** (1) The trustee has a duty not to use or deal with trust property for the trustee's own profit or for any other purpose unconnected with the trust, nor to take part in any transaction in which the trustee has an interest adverse to the beneficiary.

(2) The trustee may not enforce any claim against the trust property that the trustee purchased after or in contemplation of appointment as trustee, but the court may

allow the trustee to be reimbursed from trust property the amount that the trustee paid for the claim.

(3) A transaction between the trustee and a beneficiary which occurs during the existence of the trust or while the trustee's influence with the beneficiary remains and by which the trustee obtains an advantage from the beneficiary is presumed to be a violation of the trustee's fiduciary duties. This presumption is a presumption affecting the burden of proof. This subsection does not apply to the provisions of an agreement between a trustee and a beneficiary relating to the hiring or compensation of the trustee.

NEW SECTION. **Section 78. Duty not to undertake adverse trust.** The trustee of one trust has a duty not to knowingly become a trustee of another trust adverse in its nature to the interest of the beneficiary of the first trust, and a duty to eliminate the conflict or resign as trustee when the conflict is discovered.

NEW SECTION. **Section 79. Duty to take control of and preserve trust property.** The trustee has a duty to take reasonable steps under the circumstances to take and keep control of and to preserve the trust property.

NEW SECTION. **Section 80. Duty to make trust property productive.** The trustee has a duty to make the trust property productive under the circumstances and in

furtherance of the purposes of the trust.

NEW SECTION. **Section 81. Duty to dispose of improper investments.** (1) Except as provided in subsection (2), the trustee has a duty within a reasonable time to dispose of any part of the trust property included in the trust at the time of its creation, or later acquired by or added to the trust, that would not be a proper investment for the trustee to make.

(2) Unless the trust instrument expressly provides otherwise, the trustee may, without liability, continue to hold property included in the trust at its creation or later added to the trust or acquired pursuant to proper authority, if retention is in the best interests of the trust or in furtherance of the purposes of the trust.

NEW SECTION. **Section 82. Duty to keep trust property separate and identified.** The trustee has a duty to do the following:

(1) to keep the trust property separate from other property not subject to the trust; and

(2) to see that the trust property is designated as property of the trust.

NEW SECTION. **Section 83. Duty to enforce claims.** The trustee has a duty to take reasonable steps to enforce claims that are part of the trust property.

NEW SECTION. **Section 84. Duty to defend actions.** The

trustee has a duty to take reasonable steps to defend actions that may result in a loss to the trust.

NEW SECTION. **Section 85.** **Duty not to delegate.** (1) The trustee has a duty not to delegate to others the performance of acts that the trustee can reasonably be required personally to perform and may not transfer the office of trustee to another person nor delegate the entire administration of the trust to a cotrustee or other person.

(2) In a case where a trustee has properly delegated a matter to an agent, cotrustee, or other person, the trustee has a duty to exercise general supervision over the person performing the delegated matter.

NEW SECTION. **Section 86.** **Duty with respect to cotrustees.** If a trust has more than one trustee, each trustee has a duty to do the following:

(1) to participate in the administration of the trust; and

(2) to take reasonable steps to prevent a cotrustee from committing a breach of trust or to compel a cotrustee to redress a breach of trust.

NEW SECTION. **Section 87.** **Duty to use special skills.** (1) The trustee has a duty to apply the full extent of the trustee's skills.

(2) If the trustor, in selecting the trustee, has relied on the trustee's representation of having special

skills, the trustee is held to the standard of the skills represented.

NEW SECTION. **Section 88.** **Certain actions not violations of duties.** The provision of services for compensation by a regulated financial institution or its affiliates in the ordinary course of business either to a trust of which it also acts as trustee or to a person dealing with the trust is not a violation of the duty provided in [section 75 or 77]. For the purposes of this section, "affiliate" means a corporation that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with another domestic or foreign corporation.

NEW SECTION. **Section 89.** **Duty to use ordinary skill and prudence.** (1) The trustee shall administer the trust with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person would use to accomplish the purposes of the trust as determined from the trust instrument.

(2) When investing, reinvesting, purchasing, acquiring, exchanging, selling, and managing trust property, the trustee shall act with the care, skill, prudence, and diligence under the circumstances then prevailing, including but not limited to the general economic conditions and the anticipated needs of the trust and its beneficiaries, that a

prudent person would use to accomplish the purposes of the trust as determined from the trust instrument. In the course of administering the trust pursuant to this standard, individual investments shall be considered as part of an overall investment strategy.

(3) The trustor may expand or restrict the standards provided in subsections (1) and (2) by express provisions in the trust instrument. A trustee is not liable to a beneficiary for the trustee's reliance on these express provisions.

NEW SECTION. **Section 90. Standard of care not affected by compensation.** A trustee's standard of care and performance in administering the trust is not affected by whether or not the trustee receives any compensation.

NEW SECTION. **Section 91. Interpretation of trust terms concerning legal investments.** If a trust created before, on, or after October 1, 1989, refers to "investments permissible by law for investment of trust funds", "authorized by law for investment of trust funds", "legal investments", "authorized investments", or "investments acquired using the judgment and care which men of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income, as well as the probable

safety of their capital", or uses other words of similar meaning in defining the powers of the trustee relative to investments, such language, in the absence of other controlling or modifying provisions of the trust instrument, shall be construed as imposing the standard of care provided by [section 89] and authorizing any investment permitted under [sections 105 through 137].

NEW SECTION. **Section 92. Trustee's general duty to report information to beneficiaries.** The trustee has a duty to keep the beneficiaries of the trust reasonably informed of the trust and its administration.

NEW SECTION. **Section 93. Duty to report information about trust on request.** Except as provided in [section 95], on reasonable request by a beneficiary, the trustee shall provide the beneficiary with a report of information about the assets, liabilities, receipts, and disbursements of the trust, the acts of the trustee, and the particulars relating to the administration of the trust relevant to the beneficiary's interest, including the terms of the trust that describe or affect the beneficiary's interest.

NEW SECTION. **Section 94. Duty to provide annual statement to income beneficiaries.** Except as provided in [section 95], the trustee shall annually mail each income beneficiary an itemized statement of all current receipts and disbursements of both principal and income.

NEW SECTION. **Section 95. Exceptions to duty to report information and to provide annual statement.** The trustee is not required to report information or to provide an annual statement to a beneficiary in any of the following circumstances:

(1) to the extent the trust instrument waives the report or annual statement;

(2) in the case of a beneficiary of a revocable trust, as provided in [section 68].

(3) as to a beneficiary who has waived in writing the right to a report or annual statement. A waiver of rights under this subsection may be withdrawn in writing at any time as to the most recent annual statement or future annual statements. A waiver has no effect of the beneficiary's right to petition for a report, statement, or account pursuant to [section 179]; or

(4) if the beneficiary and the trustee are the same person.

NEW SECTION. **Section 96. Permissive accounts.** At any time during the term of the trust or upon the termination of the trust, the trustee may mail an account to trust beneficiaries. To effectively bar a beneficiary from an action against the trustee pursuant to [section 159], the account must contain the following information:

(1) a statement of receipts and disbursements of

principal and income that have occurred since the last account;

(2) a statement of the assets and liabilities of the trust since the last account;

(3) the trustee's compensation since the last account;

(4) the agents hired by the trustee, their relationship to the trustee, if any, and their compensation since the last account;

(5) a statement that the recipient of the account may petition the court pursuant to [section 179] to obtain a court review of the account and of the acts of the trustee; and

(6) a statement that claims against the trustee for breach of trust may not be made after the expiration of 3 years from the date the beneficiary receives an account disclosing facts giving rise to the claim.

NEW SECTION. **Section 97. Discretionary powers to be exercised reasonably.** Except as provided in [section 98], a discretionary power conferred upon a trustee is not left to the trustee's arbitrary discretion, but shall be exercised reasonably.

NEW SECTION. **Section 98. Standard for exercise of "absolute", "sole", or "uncontrolled" powers.** (1) Subject to the additional requirements of subsection (2), if a trust instrument confers "absolute", "sole", or "uncontrolled"

discretion on a trustee, the trustee shall act in accordance with fiduciary principles and may not act in disregard of the purposes of the trust.

(2) Notwithstanding the trustor's use of terms like "absolute", "sole", or "uncontrolled", a person who is a beneficiary of a trust and who, either individually or as trustee or cotrustee, holds a power to take or distribute income or principal to or for the benefit of himself or herself pursuant to a standard, shall exercise that power reasonably and in accordance with the standard. In any case in which the standard governing the exercise of the power does not clearly indicate that a broader power is intended, the holder of the power may exercise it in his or her favor only for his or her health, education, support, or maintenance.

NEW SECTION. **Section 99.** **Definitions.** As used in [sections 99 through 104], the following definitions apply:

(1) "Charitable trust" means a charitable trust as described in section 4947(a)(1) of the Internal Revenue Code.

(2) "Private foundation" means a private foundation as defined in section 509 of the Internal Revenue Code.

(3) "Split-interest trust" means a split-interest trust as described in section 4947(a)(2) of the Internal Revenue Code.

NEW SECTION. **Section 100.** **Distribution under charitable trust or private foundation.** During any period when a trust is considered to be a charitable trust or a private foundation, the trustee shall distribute its income for each taxable year (and principal if necessary) at a time and in a manner that will not subject the property of the trust to tax under section 4942 of the Internal Revenue Code.

NEW SECTION. **Section 101.** **Restrictions on trustees under charitable trust, private foundations, or split-interest trust.** During any period when a trust is considered to be a charitable trust, a private foundation, or a split-interest trust, the trustee may not do any of the following:

(1) engage in any act of self-dealing as defined in section 4941(d) of the Internal Revenue Code;

(2) retain any excess business holdings as defined in section 4943(c) of the Internal Revenue Code;

(3) make any investments in such manner as to subject the property of the trust to tax under section 4944 of the Internal Revenue Code; or

(4) make any taxable expenditure as defined in section 4945(d) of the Internal Revenue Code.

NEW SECTION. **Section 102.** **Exceptions applicable to split-interest trusts.** With respect to split-interest

trusts:

(1) [Subsections (2) and (3) of section 101] do not apply to any trust described in section 4947(b)(3) of the Internal Revenue Code.

(2) [Section 101] does not apply with respect to any of the following:

(a) any amounts payable under the terms of such trust to income beneficiaries, unless a deduction was allowed under section 170(f)(2)(B), 2055(e)(2)(B), or 2522(c)(2)(B) of the Internal Revenue Code;

(b) any amounts in trust other than amounts for which a deduction was allowed under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522 of the Internal Revenue Code, if the amounts are segregated, as that term is defined in section 4947(a)(3) of the Internal Revenue Code, from amounts for which no deduction was allowable; or

(c) any amounts irrevocably transferred in trust before May 27, 1969.

NEW SECTION. **Section 103.** Incorporation in trust instruments. The provisions of [sections 100 through 102] shall be considered to be contained in the instrument creating every trust to which [sections 99 through 104] apply. Any provision of the instrument inconsistent with or contrary to [sections 99 through 104] is without effect.

NEW SECTION. **Section 104.** Proceedings. (1) A

proceeding contemplated by section 101(1)(3) of the federal Tax Reform Act of 1969 (Public Law 91-172) may be commenced pursuant to [section 179] by the organization involved. All specifically named beneficiaries of the organization and the attorney general shall be parties to the proceedings. Notwithstanding [section 165], this provision is not exclusive and does not limit any jurisdiction that otherwise exists.

(2) If an instrument creating a trust affected by this section has been recorded, a notice of pendency of judicial proceedings under this section shall be recorded in a similar manner within 10 days from the commencement of the proceedings. A duly certified copy of any final judgment or decree in the proceedings shall be similarly recorded.

NEW SECTION. **Section 105.** General powers of trustee. A trustee has the following powers without the need to obtain court authorization:

(1) the powers conferred by the trust instrument;

(2) except as limited in the trust instrument, the powers conferred by statute; and

(3) except as limited in the trust instrument, the power to perform any act that a trustee would perform for the purposes of the trust under the standard of care provided in [section 89].

NEW SECTION. **Section 106.** Power of court to relieve

trustee from restrictions on powers. [Sections 109 through 137] do not affect the power of a court to relieve a trustee from restrictions on the exercise of powers under the trust instrument.

NEW SECTION. **Section 107.** **Exercise of powers subject to trustee's duties.** The grant of a power to a trustee, whether by the trust instrument, by statute, or by the court, does not in itself require or permit the exercise of the power. The exercise of a power by a trustee is subject to the trustee's fiduciary duties.

NEW SECTION. **Section 108.** **Application of rules governing trustees' powers.** An instrument that incorporates the powers provided in former Title 72, chapter 21, ("Montana Trustees' Powers Act") shall be considered to refer to the powers provided [sections 109 through 137]. For this purpose, the trustee's powers under former Title 72, chapter 21, ("Montana Trustees' Powers Act") are not diminished and the trustee is not required to obtain court approval for exercise of a power for which court approval was not required by former law.

NEW SECTION. **Section 109.** **Collecting and holding property.** The trustee has the power to collect, hold, and retain trust property received from a trustor or any other person until, in the judgment of the trustee, disposition of the property should be made. The property may be retained

even though it includes property in which the trustee is personally interested.

NEW SECTION. **Section 110.** **Receiving additions to trust.** The trustee has the power to accept additions to the property of the trust from a trustor or any other person.

NEW SECTION. **Section 111.** **Participation in business -- change in form of business.** The trustee has the power to continue to participate in the operation of any business or other enterprise that is part of the trust property and may effect incorporation, dissolution, or other change in the form of the organization of the business or enterprise.

NEW SECTION. **Section 112.** **Investments.** The trustee has the power to invest in any kind of property, whether real, personal, or mixed.

NEW SECTION. **Section 113.** **Investments in obligations of United States government.** ~~In the absence of an express provision to the contrary in a trust instrument, whenever the instrument directs or permits investment in obligations of the United States government, the trustee has the power to invest in those obligations directly or in the form of an interest in a money market mutual fund registered under the investment Company Act of 1940 (15 U.S.C. section 80a-1 et seq.) or an investment vehicle authorized for the collective investment of trust funds pursuant to section 9.18 of Title 12 of the Code of Federal Regulations, the portfolios of~~

~~which are limited to United States government obligations and to repurchase agreements fully collateralized by United States government obligations IF THE PERSONAL REPRESENTATIVE IS AUTHORIZED TO INVEST FUNDS IN UNITED STATES OBLIGATIONS, HE MAY INVEST IN THESE OBLIGATIONS EITHER DIRECTLY OR IN THE FORM OF SECURITIES OF OR OTHER INTERESTS IN AN OPEN END OR CLOSED END MANAGEMENT TYPE INVESTMENT COMPANY OR INVESTMENT TRUST REGISTERED UNDER THE INVESTMENT COMPANY ACT OF 1940 (15 U.S.C. 80A 1 THROUGH 80A 64), AS AMENDED, IF:~~

~~(1) THE PORTFOLIO OF THE INVESTMENT COMPANY OR INVESTMENT TRUST IS LIMITED TO UNITED STATES GOVERNMENT OBLIGATIONS AND REPURCHASE AGREEMENTS FULLY COLLATERALIZED BY UNITED STATES GOVERNMENT OBLIGATIONS; AND~~

~~(2) THE INVESTMENT COMPANY OR INVESTMENT TRUST TAKES DELIVERY OF THE COLLATERAL FOR ANY REPURCHASE AGREEMENT, EITHER DIRECTLY OR THROUGH AN AUTHORIZED CUSTODIAN IN THE ABSENCE OF AN EXPRESS PROVISION TO THE CONTRARY IN A TRUST INSTRUMENT, WHENEVER THE INSTRUMENT DIRECTS OR PERMITS INVESTMENT IN OBLIGATIONS OF THE UNITED STATES GOVERNMENT, THE TRUSTEE HAS THE POWER TO INVEST IN THOSE OBLIGATIONS DIRECTLY OR IN THE FORM OF SECURITIES OR OTHER INTERESTS IN AN OPEN-END OR CLOSED-END MANAGEMENT TYPE INVESTMENT COMPANY OR INVESTMENT TRUST REGISTERED UNDER THE INVESTMENT COMPANY ACT OF 1040 (15 U.S.C. 80A-1 THROUGH 80A-64), AS AMENDED, OR AN INVESTMENT VEHICLE AUTHORIZED FOR THE COLLECTIVE INVESTMENT OF TRUST FUNDS PURSUANT TO SECTION 9.18 OF TITLE 12 OF THE CODE OF FEDERAL REGULATIONS, IF:~~

~~(1) THE PORTFOLIO OF THE INVESTMENT COMPANY, INVESTMENT TRUST, OR INVESTMENT VEHICLE IS LIMITED TO UNITED STATES GOVERNMENT OBLIGATIONS AND REPURCHASE AGREEMENTS FULLY COLLATERALIZED BY UNITED STATES GOVERNMENT OBLIGATIONS; AND~~

~~(2) THE INVESTMENT COMPANY, INVESTMENT TRUST, OR INVESTMENT VEHICLE TAKES DELIVERY OF THE COLLATERAL FOR ANY REPURCHASE AGREEMENT, EITHER DIRECTLY OR THROUGH AN AUTHORIZED CUSTODIAN.~~

NEW SECTION. **Section 114.** **Deposits.** (1) The trustee has the power to deposit trust funds at reasonable interest with any of the following:

(a) an insured commercial or savings bank;

(b) an insured building and loan association; or

(c) an insured credit union.

(2) A trustee may deposit trust funds as described in subsection (1) in a financial institution operated by, or that is an affiliate of, the trustee. For the purpose of this subsection, "affiliate" means a corporation that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with another domestic or foreign corporation.

(3) This section does not limit the power of a trustee

in a proper case to deposit trust funds in institutions as described in subsection (1) that are subject to notice or other conditions respecting withdrawal prescribed by law or governmental regulation.

(4) Nothing in this section prevents the trustee from holding an amount of trust property reasonably necessary for the orderly administration of the trust in the form of cash or in a checking account without interest.

NEW SECTION. **Section 115. Acquisition and disposition of property.** The trustee has the power to acquire or dispose of property, for cash or on credit, at public or private sale, or by exchange.

NEW SECTION. **Section 116. Management of property.** The trustee has the power to manage, control, divide, develop, improve, exchange, partition, change the character of, or abandon trust property or any interest therein.

NEW SECTION. **Section 117. Encumbrances.** The trustee has the power to encumber, mortgage, or pledge trust property for a term within or extending beyond the term of the trust in connection with the exercise of any power vested in the trustee.

NEW SECTION. **Section 118. Repairs and alterations of property.** The trustee has the power to do any of the following:

(1) make ordinary or extraordinary repairs,

alterations, improvements in buildings or other trust property;

(2) demolish any improvements; or

(3) raze existing or erect new party walls or buildings.

NEW SECTION. **Section 119. Development of land.** The trustee has the power to do any of the following:

(1) subdivide or develop land;

(2) dedicate land to public use;

(3) make or obtain the vacation of plats and adjust boundaries;

(4) adjust differences in valuation on exchange or partition by giving or receiving consideration; or

(5) dedicate easements to public use without consideration.

NEW SECTION. **Section 120. Leases.** The trustee has the power to enter into a lease for any purpose as lessor or lessee with or without the option to purchase or renew and for a term within or extending beyond the term of the trust.

NEW SECTION. **Section 121. Mineral leases.** The trustee has the power to enter into a lease or arrangement for exploration and removal of gas, oil, or other minerals, and to enter into a community oil lease or a pooling or utilization agreement, and for a term within or extending beyond the term of the trust.

NEW SECTION. **Section 122. Options.** The trustee has the power to grant an option involving disposition of trust property or to take an option for the acquisition of any property, and an option may be granted or taken that is exercisable beyond the term of the trust.

NEW SECTION. **Section 123. Voting rights with respect to corporate shares, memberships, or property.** With respect to any shares of stock of a domestic or foreign corporation, any membership in a nonprofit corporation, or any other property, a trustee has the power to do any of the following:

(1) vote in person and give proxies to exercise any voting rights with respect to the shares, memberships, or property;

(2) waive notice of a meeting or give consent to the holding of a meeting; or

(3) authorize, ratify, approve, or confirm any action that could be taken by shareholders, members, or property owners.

NEW SECTION. **Section 124. Payment of calls and assessments.** The trustee has the power to pay calls, assessments, and any other sums chargeable or accruing against or on account of securities.

NEW SECTION. **Section 125. Stock subscriptions and conversions.** The trustee has the power to sell or exercise

stock subscription or conversion rights.

NEW SECTION. **Section 126. Consent to change in form of business -- voting trusts.** The trustee has the power to consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise, and to participate in voting trusts, pooling arrangements, and foreclosures, and in connection therewith, to deposit securities with and transfer title and delegate discretions to any protective or other committee as the trustee may consider advisable.

NEW SECTION. **Section 127. Holding securities in name of nominee.** The trustee has the power to hold a security in the name of a nominee or in other form without disclosure of the trust so that title to the security may pass by delivery, but the trustee is liable for any act of the nominee in connection with the security so held.

NEW SECTION. **Section 128. Insurance.** The trustee has the power to insure the property of the trust against damage or loss and to insure the trustee against liability with respect to third persons.

NEW SECTION. **Section 129. Borrowing money.** The trustee has the power to borrow money for any trust purpose to be repaid from trust property.

NEW SECTION. **Section 130. Payment and settlement of**

claims. The trustee has the power to do any of the following:

(1) pay or contest any claim;

(2) settle a claim by or against the trust by compromise, arbitration, or otherwise; or

(3) release, in whole or in part, any claim belonging to the trust.

NEW SECTION. **Section 131. Payment of taxes, trustee's compensation, and other expenses.** The trustee has the power to pay taxes, assessments, reasonable compensation of the trustee and of employees and agents of the trust, and other expenses incurred in the collection, care, administration, and protection of the trust.

NEW SECTION. **Section 132. Loans to beneficiary.** The trustee has the following powers:

(1) to make loans out of trust property to the beneficiary on terms and conditions that the trustee determines are fair and reasonable under the circumstances; and

(2) to guarantee loans to the beneficiary by encumbrances on trust property.

NEW SECTION. **Section 133. Distribution to beneficiaries under legal disability.** The trustee has the power to pay any sum distributable to a beneficiary, without regard to whether the beneficiary is under a legal

disability, by paying the sum to the beneficiary or by paying the sum to another person for the use or benefit of the beneficiary.

NEW SECTION. **Section 134. Nature and value of distributions.** The trustee has the power to effect distribution of property and money in divided or undivided interests and to adjust resulting differences in valuation. A distribution in kind may be made pro rata or non-pro rata.

NEW SECTION. **Section 135. Hiring persons.** The trustee has the power to hire persons, including accountants, attorneys, auditors, investment advisors, or other agents, even if they are associated or affiliated with the trustee, to advise or assist the trustee in the performance of administrative duties.

NEW SECTION. **Section 136. Execution and delivery of instruments.** The trustee has the power to execute and deliver all instruments which are needed to accomplish or facilitate the exercise of the powers vested in the trustee.

NEW SECTION. **Section 137. Actions and proceedings.** The trustee has the power to prosecute or defend actions, claims, or proceedings for the protection of trust property and of the trustee in the performance of the trustee's duties.

NEW SECTION. **Section 138. Short title.** {Sections 138 through 150} may be cited as the "Revised Uniform Principal

and Income Act".

NEW SECTION. **Section 139. Definitions.** As used in [sections 138 through 150], the following definitions apply:

(1) "Income beneficiary" means the person to whom income is presently payable or for whom it is accumulated for distribution as income.

(2) "Inventory value" means the adjusted basis for federal income tax purposes.

(3) "Remainder beneficiary" means the person entitled to principal, including income which has been accumulated and added to principal.

(4) "Trustee" means the original trustee, any succeeding or added trustee, and the personal representative of a decedent's estate whenever a provision of this part is applicable to the estate.

NEW SECTION. **Section 140. Duty of trustee as to receipts and expenditures.** (1) A trust shall be administered with due regard to the respective interests of income beneficiaries and remainder beneficiaries. A trust is so administered with respect to the allocation of receipts and expenditures if a receipt is credited or an expenditure is charged to income or principal or partly to each in any of the following ways:

(a) in accordance with the terms of the trust instrument, notwithstanding contrary provisions of this

part;

(b) in the absence of any contrary terms of the trust instrument, in accordance with the provisions of this part; or

(c) if neither subsection (a) nor (b) is applicable, in accordance with the standard of care provided in [section 89] and with what is reasonable and equitable in view of the interests of those entitled to income as well as of those entitled to principal.

(2) If the trust gives the trustee discretion in crediting a receipt or charging an expenditure to income or principal or partly to each, no inference that the trustee has improperly exercised such discretion arises from the fact that the trustee has made an allocation contrary to a provision of this part.

NEW SECTION. **Section 141. Income -- principal -- charges.** (1) Income is the return in money or property derived from the use of principal, including return received as:

(a) rent of real or personal property, including sums received for cancellation or renewal of a lease;

(b) interest on money lent, including sums received as consideration for the prepayment of principal except as provided in [section 145] on bond premium and bond discount;

(c) income earned during administration of a

decedent's estate as provided in [section ~~144~~ 143];

(d) corporate distributions as provided in [section ~~145~~ 144];

(e) accrued increment on bonds or other obligations issued at discount as provided in [section 145];

(f) receipts from business and farming operations as provided in [section 146];

(g) receipts from disposition of natural resources as provided in [sections 147 and 148]; or

(h) receipts from other principal subject to depletion as provided in [section 149].

(2) Principal is the property which has been set aside by the owner or the person legally empowered so that it is held in trust eventually to be delivered to a remainder beneficiary, while the return or use of the principal is in the meantime taken or received by or held for accumulation for an income beneficiary. Principal includes the following:

(a) consideration received by the trustee on the sale or other transfer of principal or a repayment of a loan or as a refund or replacement or change in the form of principal;

(b) proceeds of property taken on eminent domain proceedings;

(c) proceeds of insurance upon property forming part of the principal except proceeds of insurance upon a

separate interest of an income beneficiary;

(d) stock dividends, receipts on liquidation of a corporation, and other corporate distributions as provided in [section 144];

(e) receipts from the disposition of corporate securities as provided in [section 145];

(f) royalties and other receipts from disposition of natural resources as provided in [sections 147 and 148];

(g) receipts from other principal subject to depletion as provided in [section 149];

(h) any profit resulting from any change in the form of principal; or

(i) any allowances for depreciation established under [section 150(1)(b)].

(3) After determining income and principal in accordance with the terms of the trust instrument or of this part, the trustee shall charge to income or principal the expenses and other charges as provided in [section 150].

NEW SECTION. **Section 142. When right to income arises -- apportionment of income.** (1) An income beneficiary is entitled to income from the date specified in the trust instrument or, if none is specified, from the date an item of property becomes subject to the trust. In the case of an item of property becoming subject to a trust by reason of a person's death, it becomes subject to the trust as of the

date of the death of the person even though there is an intervening period of administration of the person's estate.

(2) Upon property becoming subject to a trust by reason of a person's death:

(a) Receipts due but not paid at the date of death of the person are principal.

(b) Receipts in the form of periodic payments (other than corporate distributions to stockholders), including rent, interest, or annuities, not due at the date of the death of the person shall be treated as accruing from day to day. That portion of the receipt accruing before the date of death is principal and the balance is income.

(3) In all other cases, any receipt from income-producing property is income even though the receipt was earned or accrued in whole or in part before the date when the property became subject to the trust.

(4) On termination of an income interest, the income beneficiary whose interest is terminated, or his or her estate, is entitled to income:

(a) undistributed on the date of termination;

(b) due but not paid to the trustee on the date of termination; and

(c) in the form of periodic payments (other than corporate distributions to stockholders), including rent, interest, or annuities, not due on the date of termination,

accrued from day to day.

(5) Corporate distributions to stockholders shall be treated as due on the day fixed by the corporation for determination of stockholders of record entitled to distribution or, if no date is fixed, on the date of declaration of the distribution by the corporation.

NEW SECTION. **Section 143.** **Income earned during administration of decedent's estate.** (1) Unless the will otherwise provides and subject to subsection (2), all expenses incurred in connection with the settlement of a decedent's estate, including debts, funeral expenses, estate taxes, interest and penalties concerning taxes, family allowances, fees of attorneys and personal representatives, and court costs, shall be charged against the principal of the estate.

(2) Unless the will otherwise provides, income from the property of a decedent's estate after the death of the testator and before distribution, including income from property used to discharge liabilities, shall be determined in accordance with the rules applicable to a trustee under [sections 1 through 164] and distributed as follows:

(a) to specific legatees and devisees, the income from the property bequeathed or devised to them respectively, less taxes, ordinary repairs, and other expenses of management and operation of the property, and an appropriate

portion of interest accrued since the death of the testator and of taxes imposed on income (excluding taxes on capital gains) that accrue during the period of administration;

(b) to all other legatees and devisees, except legatees of pecuniary bequests not in trust, the balance of the income, less the balance of taxes, ordinary repairs, and other expenses of management and operation of all property from which the estate is entitled to income, interest accrued since the death of the testator, and taxes imposed on income (excluding taxes on capital gains) that accrue during the period of administration, in proportion to their respective interests in the undistributed property of the estate computed at times of distribution on the basis of inventory value.

(3) Income received by a trustee under subsection (2) shall be treated as income of the trust.

NEW SECTION. **Section 144.** Corporate distributions. (1) Corporate distributions of shares of the distributing corporation, including distributions in the form of a stock split or stock dividend, are principal. A right to subscribe to shares or other securities issued by the distributing corporation accruing to stockholders on account of their stock ownership and the proceeds of any sale of the right, are principal.

(2) Except to the extent that the corporation

indicates that some part of a corporate distribution is a settlement of preferred or guaranteed dividends accrued since the trustee became a stockholder or is in lieu of an ordinary cash dividend, a corporate distribution is principal if the distribution is pursuant to any of the following:

(a) a call of shares;

(b) a merger, consolidation, reorganization, or other plan by which assets of the corporation are acquired by another corporation; or

(c) a total or partial liquidation of the corporation, including any distribution which the corporation indicates is a distribution in total or partial liquidation or any distribution of assets, other than cash, pursuant to a court decree or final administrative order by a government agency ordering distribution of the particular assets.

(3) Distributions made from ordinary income by a regulated investment company or by a trust qualifying and electing to be taxed under federal law as a real estate investment trust are income. All other distributions made by the company or trust, including distributions from capital gains, depreciation, or depletion, whether in the form of cash or an option to take new stock or cash or an option to purchase additional shares, are principal.

(4) Except as provided in subsections (1) through (3),

all corporate distributions are income, including cash dividends, distributions of or rights to subscribe to shares or securities or obligations of corporations other than the distributing corporation, and the proceeds of the rights or property distributions. Except as provided in subsections (2) and (3), if the distributing corporation gives a stockholder an option to receive a distribution either in cash or in its own shares, the distribution chosen is income.

(5) The trustee may rely upon any statement of the distributing corporation as to any fact relevant under any provision of this part concerning the source or character of dividends or distributions of corporate assets.

NEW SECTION. **Section 145.** Bond premium and discount. (1) Bonds or other obligations for the payment of money are principal at their inventory value, except as provided in subsection (2) for discount bonds. No provision shall be made for amortization of bond premiums or for accumulation for discount. The proceeds of sale, redemption, or other disposition of the bonds or obligations are principal.

(2) The increment in value of a bond or other obligation for the payment of money payable at a future time in accordance with a fixed schedule of appreciation in excess of the price at which it was issued is distributable as income. The increment in value is distributable to the

beneficiary who was the income beneficiary at the time of increment from the first principal cash available or, if none is available, when realized by sale, redemption, or other disposition. Whenever unrealized increment is distributed as income but out of principal, the principal shall be reimbursed for the increment when realized.

NEW SECTION. **Section 146.** Business and farming operations. (1) If a trustee uses any part of the principal in the continuance of a business of which the trustor was a sole proprietor or a partner, the net profits of the business, computed in accordance with recognized methods of accounting for a comparable business, are income. If a loss results in any fiscal or calendar year, the loss falls on principal and may not be carried into any other fiscal or calendar year for purposes of calculating net income.

(2) Recognized methods of accounting for a comparable business shall be used to determine income from an agricultural or farming operation, including the raising of animals or the operation of a nursery.

NEW SECTION. **Section 147.** Disposition of natural resources. (1) If any part of the principal consists of a right to receive royalties, overriding or limited royalties, working interests, production payments, net profit interests, or other interests in minerals or other natural resources in, on, or under land, the receipts from taking

the natural resources from the land shall be allocated as follows:

(a) If received as rent on a lease or extension payments on a lease, the receipts are income.

(b) If received from a production payment, the receipts are income to the extent of any factor for interest or its equivalent provided in the governing instrument. There shall be allocated to principal the fraction of the balance of the receipts which the unrecovered cost of the production payment bears to the balance owed on the production payment, exclusive of any factor for interest or its equivalent. The receipts not allocated to principal are income.

(c) If received as a royalty, overriding or limited royalty or bonus, or from a working, net profit, or any other interest in minerals or other natural resources, receipts not provided for in subsections (1)(a) and (1)(b) shall be apportioned on a yearly basis in accordance with this paragraph whether or not any natural resource was being taken from the land at the time the trust was established. The receipts shall be allocated entirely to income or apportioned between income and principal as the trustee in its discretion may determine, but the amount added to principal as an allowance for depletion may not exceed the lesser of:

(i) the percentage of gross receipts allowed as a deduction for depletion in computing taxable income for federal income tax purposes or

(ii) 50% of the net receipts remaining after payment of expenses, direct and indirect, computed without allowance for depletion.

(2) This section does not apply to timber, water, soil, sod, dirt, turf, or mosses.

NEW SECTION. **Section 148. Timber.** If any part of the principal consists of land from which merchantable timber may be removed, the receipts from taking the timber from the land shall be allocated in accordance with [section 140(1)(c)].

NEW SECTION. **Section 149. Other property subject to depletion.** Except as provided in [sections 147 and 148], if the principal consists of property subject to depletion, including leaseholds, patents, copyrights, royalty rights, and rights to receive payments on a contract for deferred compensation, receipts from the property, not in excess of 5% per year of its inventory value, are income, and the balance is principal.

NEW SECTION. **Section 150. Charges against income and principal.** (1) The following charges shall be made against income:

(a) ordinary expenses incurred in connection with the

administration, management, or preservation of the trust property, including:

(i) regularly recurring taxes assessed against any portion of the principal;

(ii) water rates;

(iii) premiums on insurance taken upon the interests of the income beneficiary, remainder beneficiary, or trustee;

(iv) interest paid by the trustee; and

(v) ordinary repairs;

(b) a reasonable allowance for depreciation on property subject to depreciation under generally accepted accounting principles, but no allowance may be made for depreciation on that portion of any real property used by a beneficiary as a residence or for depreciation of any property held by the trustee on July 1, 1983, for which the trustee was not then making an allowance for depreciation;

(c) not less than one-half of court costs, attorney fees, and other fees on periodic judicial accounting, unless the court directs otherwise;

(d) court costs, attorney fees, and fees on other accountings or judicial proceedings if the matter primarily concerns the income interest, unless the court directs otherwise;

(e) not less than one-half of the trustee's regular compensation, whether based on a percentage of principal or

income, and all expenses reasonably incurred for current management of principal and application of income, unless the court directs otherwise; and

(f) any tax levied upon receipts defined as income under [sections 138 through 150] or the trust instrument and payable by the trustee.

(2) If charges against income are of unusual amount, the trustee may, by means of reserves or other reasonable means, charge them over a reasonable period of time and withhold from distribution sufficient sums to regularize distributions.

(3) (a) The following charges shall be made against principal:

(i) trustee's compensation not chargeable to income under subsections (1)(d) and (1)(e);

(ii) special compensation of trustees;

(iii) expenses reasonably incurred in connection with principal, court costs, and attorney fees primarily concerning matters of principal; and

(iv) trustee's compensation computed on principal as an acceptance, distribution, or termination fee;

(b) charges not provided for in subsection (1), including:

(i) the costs of investing and reinvesting principal;

(ii) the payments on principal of an indebtedness,

including a mortgage amortized by periodic payments of principal;

(iii) expenses for preparation of property for rental or sale; and

(iv) unless the court directs otherwise, expenses incurred in maintaining or defending any action to construe the trust or protect it or the property or assure the title of any trust property;

(c) extraordinary repairs or expenses incurred in making a capital improvement to principal, including special assessments, but a trustee may establish an allowance for ~~depreciation~~ DEPRECIATION out of income to the extent permitted by subsection (1)(b) and by [section 146];

(d) any tax levied upon profit, gain, or other receipts allocated to principal, notwithstanding denomination of the tax as an income tax by the taxing authority; and

(e) if an estate or inheritance tax is levied in respect to a trust in which both an income beneficiary and a remainder beneficiary have an interest, any amount apportioned to the trust, including interest and penalties, even though the income beneficiary also has rights in the principal.

(4) Regularly recurring charges payable from income shall be apportioned to the same extent and in the same

manner that income is apportioned under [section 142].

NEW SECTION. **Section 151.** **Breach of trust.** A violation by the trustee of any duty that the trustee owes the beneficiary is a breach of trust.

NEW SECTION. **Section 152.** **Trustee's liability to beneficiary for acts of agent.** (1) Except as provided in subsection (2), the trustee is not liable to the beneficiary for the acts or omissions of an agent.

(2) The trustee is liable to the beneficiary for an act or omission of an agent employed by the trustee in the administration of the trust that would be a breach of the trust if committed by the trustee under any of the following circumstances:

(a) whenever the trustee has the power to direct the act of the agent;

(b) whenever the trustee delegates to the agent the authority to perform an act that the trustee is under a duty not to delegate;

(c) whenever the trustee does not use reasonable care in the selection of the agent or the retention of the agent selected by the trustee;

(d) whenever the trustee does not exercise proper supervision over the agent's conduct in a case where the trustee has the power to supervise the agent;

(e) whenever the trustee conceals the act of the

agent; or

(f) whenever the trustee neglects to take reasonable steps to compel the agent to redress the wrong in a case where the trustee knows of the agent's acts or omissions.

(3) The liability of a trustee for acts or omissions of agents that occurred before October 1, 1989, is governed by prior law and not by this section.

NEW SECTION. **Section 153.** Trustee's liability to beneficiary for acts of cotrustee. (1) Except as provided in subsection (2), a trustee is not liable to the beneficiary for a breach of trust committed by a cotrustee.

(2) A trustee is liable to the beneficiary for a breach committed by a cotrustee under any of the following circumstances:

(a) whenever the trustee participates in a breach of trust committed by the cotrustee;

(b) whenever the trustee improperly delegates the administration of the trust to the cotrustee;

(c) whenever the trustee approves, knowingly acquiesces in, or conceals a breach of trust committed by the cotrustee;

(d) whenever the trustee negligently enables the cotrustee to commit a breach of trust; or

(e) whenever the trustee neglects to take reasonable steps to compel the cotrustee to redress a breach of trust

in a case where the trustee knows or has information from which the trustee reasonably should have known of the breach.

(3) The liability of a trustee for acts or omissions of a cotrustee that occurred before October 1, 1989, is governed by prior law and not by this section.

NEW SECTION. **Section 154.** Trustee's liability to beneficiary for acts of predecessor. (1) Except as provided in subsection (2), a successor trustee is not liable to the beneficiary for a breach of trust committed by a predecessor trustee.

(2) A successor trustee is liable to the beneficiary for breach of trust involving acts or omissions of a predecessor trustee in any of the following circumstances:

(a) whenever the successor trustee knows or has information from which the successor trustee reasonably should have known of a situation constituting a breach of trust committed by the predecessor trustee, and the successor trustee improperly permits it to continue;

(b) whenever the successor trustee neglects to take reasonable steps to compel the predecessor trustee to deliver the trust property to the successor trustee; or

(c) whenever the successor trustee neglects to take reasonable steps to redress a breach of trust committed by the predecessor trustee in a case where the successor

trustee knows or has information from which the successor trustee should have known of the predecessor trustee's breach.

(3) The liability of a trustee for acts or omissions of a predecessor trustee that occurred before October 1, 1989, is governed by prior law and not by this section.

NEW SECTION. **Section 155.** **Remedies for breach of trust.** (1) If a trustee commits a breach of trust, or threatens to commit a breach of trust, a beneficiary or cotrustee of the trust may commence a proceeding for any of the following purposes that is appropriate:

(a) to compel the trustee to perform the trustee's duties;

(b) to enjoin the trustee from committing a breach of trust;

(c) to compel the trustee to redress a breach of trust by payment of money or otherwise;

(d) to appoint a receiver or temporary trustee to take possession of the trust property and administer the trust;

(e) to remove the trustee;

(f) subject to [section 210], to set aside acts of the trustee;

(g) to reduce or deny compensation of the trustee;

(h) subject to [section 210], to impose an equitable lien or a constructive trust on trust property; or

(i) subject to [section 210], to trace trust property that has been wrongfully disposed of and recover the property or its proceeds.

(2) The provision of remedies for breach of trust in subsection (1) does not prevent resort to any other appropriate remedy provided by statute or the common law.

NEW SECTION. **Section 156.** **Remedies for breach exclusively in equity.** The remedies of a beneficiary against the trustee are exclusively in equity.

NEW SECTION. **Section 157.** **Measure of liability for breach of trust.** (1) If the trustee commits a breach of trust, the trustee is chargeable with any of the following that is appropriate under the circumstances:

(a) any loss or depreciation in value of the trust estate resulting from the breach of trust, with interest;

(b) any profit made by the trustee through the breach of trust, with interest; or

(c) any profit that would have accrued to the trust estate if the loss of profit is the result of the breach of trust.

(2) If the trustee has acted reasonably under the circumstances as known to the trustee, the court, in its discretion, may excuse the trustee in whole or in part from liability under subsection (1) if it would be equitable to do so.

NEW SECTION. **Section 158.** **Measure of liability for interest.** If the trustee is liable for interest pursuant to [section 157], the trustee is liable for the greater of the following amounts:

(1) the amount of interest that accrues at the legal rate on judgments; or

(2) the amount of interest actually received.

NEW SECTION. **Section 159.** **Limitations on proceedings against trustee.** (1) Unless a claim is previously barred by adjudication, consent, limitation, or otherwise:

(a) If a beneficiary has received an interim or final account in writing, or other written report, that adequately discloses the existence of a claim against the trustee for breach of trust, the claim is barred as to that beneficiary unless a proceeding to assert the claim is commenced within 3 years after receipt of the account or report. An account or report adequately discloses existence of a claim if it provides sufficient information so that the beneficiary knows of the claim or reasonably should have inquired into the existence of the claim.

(b) If an interim or final account or other report does not adequately disclose the existence of a claim against the trustee for breach of trust, the claim is barred as to that beneficiary unless a proceeding to assert the claim is commenced within 3 years after the beneficiary

discovered, or reasonably should have discovered, the existence of the claim.

(2) For the purpose of subsection (1), a beneficiary is considered to have received an account or report, as follows:

(a) in the case of an adult who is reasonably capable of understanding the account or report, if it is received by the adult personally;

(b) in the case of an adult who is not reasonably capable of understanding the account or report, if it is received by the person's legal representative, including a guardian ad litem or other person appointed for this purpose; or

(c) in the case of a minor, if it is received by the minor's guardian or, if the minor does not have a guardian, if it is received by the minor's parent so long as the parent does not have a conflict of interest.

(3) The limitations period applicable to actions by a beneficiary against a trustee on a claim that arose before October 1, 1989, is governed by this section, except that a claim arising before October 1, 1989, is not barred by this section until October 1, 1990.

NEW SECTION. **Section 160.** **Exculpation of trustee.** (1) Except as provided in subsection (2), the trustee can be relieved of liability for breach of trust by provisions in

the trust instrument.

(2) A provision in the trust instrument is not effective to relieve the trustee of liability:

(a) for breach of trust committed intentionally, with gross negligence, or with reckless indifference to the interest of the beneficiary; or

(b) for any profit that the trustee derives from a breach of trust.

NEW SECTION. **Section 161.** Nonliability for following instructions under revocable trust. (1) Notwithstanding [section 160], a trustee of a revocable trust is not liable to a beneficiary for any act performed or omitted pursuant to written directions from the person holding the power to revoke, including a person to whom the power to direct the trustee is delegated.

(2) Subsection (1) applies to a trust that is revocable in part with respect to the interest of the beneficiary in that part of the trust property.

NEW SECTION. **Section 162.** Consent of beneficiary to relieve trustee of liability for breach of trust. (1) Except as provided in subsections (2) and (3), a beneficiary may not hold the trustee liable for an act or omission of the trustee as a breach of trust if the beneficiary consented to the act or omission before or at the time of the act or omission.

(2) The consent of the beneficiary does not preclude the beneficiary from holding the trustee liable for a breach of trust in any of the following circumstances:

(a) whenever the beneficiary was under an incapacity at the time of the consent or of the act or omission;

(b) whenever the beneficiary at the time consent was given did not know of his rights and of the material facts that the trustee knew or should have known and that the trustee did not reasonably believe that the beneficiary knew; or

(c) whenever the consent of the beneficiary was induced by improper conduct of the trustee.

(3) Whenever the trustee has an interest in the transaction adverse to the interest of the beneficiary, the consent of the beneficiary does not preclude the beneficiary from holding the trustee liable for a breach of trust under any of the circumstances described in subsection (2) or whenever the transaction to which the beneficiary consented was not fair and reasonable to the beneficiary.

NEW SECTION. **Section 163.** Discharge of trustee's liability by release or contract. (1) Except as provided in subsection (2), a beneficiary may be precluded from holding the trustee liable for a breach of trust by the beneficiary's release or contract effective to discharge the trustee's liability to the beneficiary for that breach.

(2) A release or contract is not effective to discharge the trustee's liability for a breach of trust in any of the following circumstances:

(a) whenever the beneficiary was under an incapacity at the time of making the release or contract;

(b) whenever the beneficiary did not know of his rights and of the material facts:

(i) that the trustee knew or reasonably should have known; and

(ii) that the trustee did not reasonably believe that the beneficiary knew;

(c) whenever the release or contract of the beneficiary was induced by improper conduct of the trustee; or

(d) whenever the transaction involved a bargain with the trustee that was not fair and reasonable.

NEW SECTION. **Section 164.** Discharge of trustee's liability by subsequent affirmance. (1) Except as provided in subsection (2), if the trustee, in breach of trust, enters into a transaction that the beneficiary may at his option reject or affirm, and the beneficiary affirms the transaction, the beneficiary may not thereafter reject it and hold the trustee liable for any loss occurring after the trustee entered into the transaction.

(2) The affirmance of a transaction by the beneficiary

does not preclude the beneficiary from holding a trustee liable for a breach of trust if, at the time of the affirmance, any of the following circumstances existed:

(a) the beneficiary was under an incapacity;

(b) the beneficiary did not know of his rights and of the material facts:

(i) that the trustee knew or reasonably should have known; and

(ii) that the trustee did not reasonably believe that the beneficiary knew;

(c) the affirmance was induced by improper conduct of the trustee; or

(d) the transaction involved a bargain with the trustee that was not fair and reasonable.

NEW SECTION. **Section 165.** Subject matter jurisdiction. (1) The district court having jurisdiction over the trust pursuant to [sections 1 through 215] has exclusive jurisdiction of proceedings concerning the internal affairs of trusts.

(2) The district court having jurisdiction over the trust pursuant to [sections 1 through 215] has concurrent jurisdiction of the following:

(a) actions and proceedings to determine the existence of trusts;

(b) actions and proceedings by or against creditors or

debtors of trusts; and

(c) other actions and proceedings involving trustees and third persons.

NEW SECTION. **Section 166.** **Full-power court.** In proceedings concerning the internal affairs of trusts commenced pursuant to [sections 1 through 215], the court has all the powers of a district court exercising its general jurisdiction.

NEW SECTION. **Section 167.** **Principal place of administration of trust.** (1) The principal place of administration of the trust is the usual place where the day-to-day activity of the trust is carried on by the trustee or its representative who is primarily responsible for the administration of the trust.

(2) If the principal place of administration of the trust cannot be determined under subsection (1), it shall be determined as follows:

(a) if the trust has a single trustee, the principal place of administration of the trust is the trustee's residence or usual place of business; or

(b) if the trust has more than one trustee, the principal place of administration of the trust is the residence or usual place of business of any of the cotrustees as agreed upon by them. If not agreed upon by the cotrustees, the principal place of administration of the

trust is the residence or usual place of business of any of the cotrustees.

NEW SECTION. **Section 168.** **Jurisdiction over trustees and beneficiaries.** Subject to [section 169]:

(1) by accepting the trusteeship of a trust having its principal place of administration in this state the trustee submits personally to the jurisdiction of the court under [sections 1 through 215]; and

(2) to the extent of their interests in the trust, all beneficiaries of a trust having its principal place of administration in this state are subject to the jurisdiction of the court under [sections 1 through 215].

NEW SECTION. **Section 169.** **Basis of jurisdiction over trust, trust property, and trust parties.** The court may exercise jurisdiction in proceedings under this division on any basis permitted by Rule 4 of the Rules of Civil Procedure.

NEW SECTION. **Section 170.** **Venue.** (1) The proper county for commencement of a proceeding pursuant to [sections 165 through 178] is either of the following:

(a) in the case of a living trust, the county where the principal place of administration of the trust is located; or

(b) in the case of a testamentary trust, either the county where the decedent's estate is administered or where

the principal place of administration of the trust is located.

(2) If a living trust has no trustee, the proper county for commencement of a proceeding for appointing a trustee is the county where the trust property, or some portion of the trust property, is located.

(3) Except as otherwise provided in subsections (1) and (2), the proper county for commencement of a proceeding pursuant to [sections 1 through 215] is determined by the rules applicable to civil actions generally.

NEW SECTION. **Section 171.** Jury trial. There is no right to a jury trial in proceedings under [sections 1 through 215] concerning the internal affairs of trusts.

NEW SECTION. **Section 172.** Application of part. This part applies to notice in proceedings commenced pursuant to [sections 1 through 215] or notice otherwise required or permitted by [sections 1 through 215].

NEW SECTION. **Section 173.** Manner of mailing -- when mailing complete. (1) If a notice or other paper is required or permitted to be mailed, it shall be sent by first-class mail.

(2) Mailing is complete when the notice or other paper is deposited in the mail, postage prepaid, addressed to the person to whom it is mailed.

NEW SECTION. **Section 174.** Personal delivery instead

of mailing. If a notice or other paper is required or permitted to be mailed, it may be delivered personally to the person to whom it is required or permitted to be mailed.

NEW SECTION. **Section 175.** Proof of giving notice -- conclusiveness of order. (1) Proof of the giving of notice shall be made at or before the hearing to the satisfaction of the court.

(2) If it appears to the satisfaction of the court that notice has been regularly given or that the party entitled to notice has waived, the court shall so find in its order. When the order becomes final, it is conclusive on all persons, whether or not in being.

NEW SECTION. **Section 176.** Additional notice. (1) The court may, on its own motion or on motion of a trustee or other person interested in the trust, require that further or additional notice be given at any state of the proceeding. The court may prescribe the form and method of the notice to be given.

(2) A petitioner or other person required to give notice may cause notice to be given to any person interested in the trust without the need for a court order.

NEW SECTION. **Section 177.** Shortening time. The court may for good cause shorten the time for giving a notice.

NEW SECTION. **Section 178.** Notice of postponed hearings. The court may continue or postpone any hearing,

from time to time, in the interest of justice, and no further notice of the continued or postponed hearing is required unless otherwise ordered by the court.

NEW SECTION. **Section 179.** Petitioners -- grounds for petition. (1) Except as provided in [section 68], a trustee or beneficiary of a trust may petition the court under [sections 165 through 203] concerning the internal affairs of the trust or to determine the existence of the trust.

(2) Proceedings concerning the internal affairs of a trust include, but are not limited to, proceedings for any of the following purposes:

(a) determining questions of construction of a trust instrument;

(b) determining the existence or nonexistence of any immunity, power, privilege, duty, or right;

(c) determining the validity of a trust provision;

(d) ascertaining beneficiaries and determining to whom property shall pass or be delivered upon final or partial termination of the trust, to the extent the determination is not made by the trust instrument;

(e) settling the accounts and passing upon the acts of the trustee, including the exercise of discretionary powers;

(f) instructing the trustee;

(g) compelling the trustee to report information about the trust or account to the beneficiary, if:

(i) the trustee has failed to submit a requested report or account within 60 days after written request of the beneficiary; and

(ii) no report or account has been made within 6 months preceding the request;

(h) granting powers to the trustee;

(i) fixing or allowing payment of the trustee's compensation;

(j) appointing or removing a trustee;

(k) accepting the resignation of a trustee;

(l) compelling redress of a breach of the trust by any available remedy;

(m) approving or directing the modification or termination of the trust;

(n) approving or directing the combination or division of trusts;

(o) amending or conforming the trust instrument in the manner required to qualify a decedent's estate for the charitable estate tax deduction under federal law, including the addition of mandatory governing instrument requirements for a charitable remainder trust as required by final regulations and rulings of the United States internal revenue service, in any case in which all parties interested in the trust have submitted written agreement to the proposed changes or written disclaimer of interest;

(p) authorizing or directing transfer of a trust or trust property to or from another jurisdiction;

(q) directing transfer of a testamentary trust subject to continuing court jurisdiction from one county to another;

(r) approving removal of a testamentary trust from continuing court jurisdiction; or

(s) reforming or excusing compliance with the governing instrument of an organization pursuant to [section 104].

NEW SECTION. **Section 180.** Commencement of proceeding. (1) A proceeding under [sections 165 through 203] is commenced by filing a verified petition stating facts showing that the petition is authorized under this chapter and the grounds of the petition.

(2) When a petition that requires a hearing is filed with the court clerk, the clerk shall set the matter for hearing.

NEW SECTION. **Section 181.** Dismissal of petition. The court may dismiss a petition if it appears that the proceeding is not reasonably necessary for the protection of the interests of the trustee or beneficiary.

NEW SECTION. **Section 182.** Notice. At least 14 days before the time set for the hearing on the petition, the petitioner shall cause notice of the time and place of hearing to be mailed to any of the following persons who are

not petitioners:

(1) all trustees;

(2) all beneficiaries who are entitled to notice; and

(3) the attorney general, if the petition is related to a charitable trust subject to the jurisdiction of the attorney general, unless the attorney general waives notice.

NEW SECTION. **Section 183.** Request for special notice. (1) If proceedings involving a trust are pending, a beneficiary of the trust may, in person or by attorney, serve on the trustee or the trustee's attorney and file with the court clerk where the proceedings are pending a written request stating that the beneficiary desires special notice of the filing of petitions in the proceeding relating to any or all of the purposes described in [section 179] and giving an address for receiving notice by mail. Proof of service of the request on the trustee shall be filed with the court clerk when the request is filed.

(2) Except as provided in subsection (3), after serving and filing a request and proof of service pursuant to subsection (1), the beneficiary is entitled to notice pursuant to [section 182].

(3) A request for special notice made by a beneficiary whose right to notice is restricted by [section 70] is not effective.

NEW SECTION. **Section 184.** Request for copy of

petition. If a trustee or beneficiary has served and filed either a notice of appearance, in person or by counsel, directed to the petitioner or the petitioner's counsel in connection with a particular petition and proceeding or a written request for a copy of the petition, and has given an address to which notice or a copy of the petition may be mailed or delivered, the petitioner shall cause a copy of the petition to be mailed to that person within 5 days after service of the notice of appearance or receipt of the request.

NEW SECTION. **Section 185. Authority to make necessary orders -- temporary trustee.** The court in its discretion may make any orders and take any other action necessary or proper to dispose of the matters presented by the petition, including appointment of a temporary trustee to administer the trust in whole or in part.

NEW SECTION. **Section 186. Appeal.** An appeal may be taken from the grant or denial of any final order made under [sections 165 through 203], except the following:

(1) compelling the trustee to submit an account or report acts as trustee to a beneficiary pursuant to [section 179(2)(g)];

(2) accepting the resignation of a trustee pursuant to [section 179(2)(k)]; or

(3) approving removal of a testamentary trust from

continuing court jurisdiction pursuant to [section 179(2)(r)].

NEW SECTION. **Section 187. Appointment of guardian ad litem.** (1) The court may, on its own motion or on request of a trustee or other person interested in the trust, appoint a guardian ad litem at any stage of a proceeding concerning the trust to represent the interest of any of the following persons, if the court determines that representation of the interest otherwise would be inadequate:

(a) a minor;

(b) an incapacitated person;

(c) an unborn person;

(d) an unascertained person;

(e) a person whose identity or address is unknown; or

(f) a designated class of persons who are not ascertained or are not in being.

(2) If not precluded by a conflict of interest, a guardian ad litem may be appointed to represent several persons or interests.

(3) The reasonable expenses of the guardian ad litem, including compensation and attorney's fees, shall be determined by the court and paid as the court orders, either out of trust property or by the petitioner.

(4) If no guardian ad litem is appointed, an unborn person or an unascertained person is bound by an order to

the extent his or her interest is adequately represented by another party having a substantially identical interest in the proceeding.

NEW SECTION. **Section 188.** **Intermittent judicial intervention in trust administration.** The administration of trusts is intended to proceed expeditiously and free of judicial intervention, subject to the jurisdiction of the court.

NEW SECTION. **Section 189.** **Enforcement of beneficiary's rights under charitable trust by attorney general.** In a case involving a charitable trust subject to the jurisdiction of the attorney general, the attorney general may petition under [sections 165 through 203].

NEW SECTION. **Section 190.** **Application of part.** (1) [Sections 190 through 195] apply to all of the following:

(a) a trust that is subject to [sections 1 through 215]; and

(b) any other trust to which the provisions of [sections 165 through 203] are made applicable by statute or trust instrument.

(2) [Sections 190 through 195] do not prevent the transfer of the place of administration of a trust or of trust property to another jurisdiction by any other available means.

NEW SECTION. **Section 191.** **Transfer of place of**

administration or property from Montana. (1) The court may make an order for the transfer of the place of administration of a trust or the transfer of some or all of the trust property to a jurisdiction outside this state as provided in [sections 165 through 203].

(2) Except as otherwise provided in [sections 190 through 195], proceedings under [sections 165 through 203] are governed by [sections 190 through 195].

NEW SECTION. **Section 192.** **Contents of petition.** The petition for transfer shall set forth all of the following:

(1) the names and places of residence of the following:

(a) the trustee administering the trust in this state; and

(b) the trustee, including any domiciliary trustee, who will administer the trust or trust property in the other jurisdiction;

(2) the names, ages, and places of residence of the living beneficiaries, as far as known to the petitioner;

(3) whether the trustee who will administer the trust in the other jurisdiction has agreed to accept the trust. If so, the acceptance or a copy shall be attached as an exhibit to the petition or otherwise filed with the court;

(4) a general statement of the qualifications of the trustee who will administer the trust in the other

jurisdiction and the amount of fiduciary bond, if any. If the trustee is an individual, the statement shall include the trustee's age;

(5) a general statement of the nature and value of the property of any trust of the same trustor being administered in the other jurisdiction by the trustee who will administer the trust in the other jurisdiction;

(6) the name of the court, if any, having jurisdiction of the trustee in the other jurisdiction or of its accounts or in which a proceeding may be had with respect to administration of the trust or the trustee's accounts;

(7) a statement of the character, condition, location, and value of the trust property sought to be transferred;

(8) whether there is any pending civil action in this state against the trustee arising out of the administration of the trust sought to be transferred; and

(9) a statement of the reasons for the transfer.

NEW SECTION. **Section 193.** Notice and hearing. (1) At least 14 days before the time set for the hearing on the petition, the petitioner shall cause notice of the time and place of the hearing to be mailed to each of the persons named in the petition at their respective addresses as stated in the petition.

(2) Any person interested in the trust, as trustee, beneficiary, or otherwise, may appear and file written

grounds in opposition to the petition.

NEW SECTION. **Section 194.** Order granting transfer. The court may, in its discretion, grant the petition and order the trustee to transfer the trust property or to transfer the place of administration of the trust to the other jurisdiction if, after hearing, all of the following appear to the court:

(1) the transfer of the trust property to a trustee in another jurisdiction, or the transfer of the place of administration of the trust to another jurisdiction, will promote the best interests of the trust and those interested in it, taking into account the interest in the economical and convenient administration of the trust;

(2) the transfer will not violate the trust instrument; and

(3) any new trustee to whom the trust property is to be transferred is qualified, willing, and able to administer the trust or trust property under the trust instrument.

NEW SECTION. **Section 195.** Manner of transfer -- discharge of trustee. If a transfer is ordered under this chapter, the court may direct the manner of transfer and impose terms and conditions as may be just, including, but not limited to, a requirement for the substitution of a successor trustee in any pending litigation in this state. The delivery of property in accordance with the order of the

court is a discharge of the trustee in relation to all property embraced in the order.

NEW SECTION. **Section 196.** Application. (1) [Sections 196 through 203] apply to a trust, or portion thereof, administered in a jurisdiction outside this state.

(2) [Sections 196 through 203] do not prevent the transfer of the place of administration of a trust or trust property to this state by any other available means.

NEW SECTION. **Section 197.** Transfer of place of administration or property to Montana. (1) The court may make an order accepting the transfer of the place of administration of a trust from another jurisdiction to this state or the transfer of some or all of the trust property in another jurisdiction to a trustee in this state as provided in [sections 196 through 203].

(2) Except as otherwise provided in [sections 196 through 203], proceedings under [sections 196 through 203] are governed by this chapter.

NEW SECTION. **Section 198.** Venue. (1) If the petition requests that a resident of this state be appointed trustee, the petition shall be filed in the court of the county where the proposed principal place of administration of the trust pursuant to [section 167] is located.

(2) If the petition requests that only a nonresident of this state be appointed trustee, the petition shall be

filed in the court of the county where either:

(a) any beneficiary resides; or

(b) a substantial portion of the trust property to be transferred is located or will be located.

NEW SECTION. **Section 199.** Contents of petition. The petition for transfer shall set forth all of the following:

(1) the names and places of residence of the following:

(a) the trustee administering the trust in the other jurisdiction; and

(b) the proposed trustee to whom administration of the trust or trust property will be transferred;

(2) the names, ages, and places of residence of all living beneficiaries, as far as known to the petitioner;

(3) whether administration of the trust has been subject to supervision in a jurisdiction outside this state. If so, the petition shall state whether a petition or appropriate request for transfer of place of administration of the trust or trust property to this state has been filed, if necessary, with the court in the other jurisdiction, and the status of the petition or request.

(4) whether the trustee proposed to administer the trust in this state has agreed to accept the trust in this state. If the trustee has agreed, the acceptance shall be attached as an exhibit to the petition or otherwise filed

with the court.

(5) a general statement of the qualifications of the trustee proposed to administer the trust in this state and the amount of any bond to be requested. If the trustee is an individual, the statement shall include the trustee's age.

(6) a copy of the trust instrument or a statement of the terms of the trust instrument in effect at the time the petition is filed, including all amendments thereto;

(7) a statement of the character, condition, location, and value of the trust property sought to be transferred; and

(8) a statement of the reasons for the transfer.

NEW SECTION. **Section 200. Notice and hearing.** (1) At least 14 days before the time set for the hearing on the petition, the petitioner shall cause notice of the time and place of the hearing to be mailed to each of the persons named in the petition at their respective addresses as stated in the petition.

(2) Any person interested in the trust, as trustee, beneficiary, or otherwise, may appear and file written grounds in opposition to the petition.

NEW SECTION. **Section 201. Order accepting transfer and appointing trustee.** (1) The court may, in its discretion, grant the petition and issue an order accepting transfer of trust property or the place of administration of

the trust to this state and appoint a trustee to administer the trust in this state, if, after hearing, all of the following appear to the court:

(a) the transfer of the trust property to a trustee in this state, or the transfer of the place of administration of the trust to this state, will promote the best interests of the trust and those interested in it, taking into account the interest in the economical and convenient administration of the trust;

(b) the transfer will not violate the trust instrument;

(c) the trustee appointed by the court to administer the trust in this state, and to whom the trust property is to be transferred, is qualified, willing, and able to administer the trust or trust property under the trust instrument; and

(d) the proper court in the other jurisdiction has approved the transfer if approval is necessary under the law of the other jurisdiction.

(2) If the court grants the petition under subsection (1), the court shall require the trustee to give a bond, if necessary under the law of the other jurisdiction or of this state, and may require bond as provided in [section 49].

NEW SECTION. **Section 202. Conditional order accepting transfer.** If appropriate to facilitate transfer of the trust

property or the place of administration of a trust to this state, the court may issue a conditional order appointing a trustee to administer the trust in this state and indicating that transfer to this state will be accepted if transfer is approved by the proper court of the other jurisdiction.

NEW SECTION. **Section 203. Administration of transferred trust.** A trust transferred to this state pursuant to [sections 165 through 203] shall be administered in the same manner as a trust of that type created in this state.

NEW SECTION. **Section 204. Personal liability of trustee to third persons on contracts.** (1) Unless otherwise provided in the contract or in [sections 165 through 203], a trustee is not personally liable on a contract properly entered into in the trustee's fiduciary capacity in the course of administration of the trust unless the trustee fails to reveal the trustee's representative capacity or identify the trust in the contract.

(2) The personal liability of a trustee on a contract entered into before October 1, 1989, is governed by prior law and not by this section.

NEW SECTION. **Section 205. Personal liability of trustee arising from ownership or control of trust estate.** A trustee is personally liable for obligations arising from ownership or control of trust property only if the trustee

is personally at fault.

NEW SECTION. **Section 206. Personal liability of trustee for torts.** A trustee is personally liable for torts committed in the course of administration of the trust only if the trustee is personally at fault.

NEW SECTION. **Section 207. Liability of dissenting cotrustee to third persons.** (1) A cotrustee who does not join in exercising a power held by three or more cotrustees is not liable to third persons for the consequences of the exercise of the power.

(2) A dissenting cotrustee who joins in an action at the direction of the majority cotrustees is not liable to third persons for the action if the dissenting cotrustee expresses the dissent in writing to any other cotrustee at or before the time the action is taken.

(3) This section does not excuse a cotrustee from liability for failure to discharge the cotrustee's duties as a trustee.

NEW SECTION. **Section 208. Assertion of claims against trust.** A claim based on a contract entered into by a trustee in the trustee's representative capacity, on an obligation arising from ownership or control of trust property, or on a tort committed in the course of administration of the trust may be asserted against the trust by proceeding against the trustee in the trustee's representative capacity, whether or

not the trustee is personally liable on the claim.

NEW SECTION. **Section 209. Liability as between trustee and trust estate.** The question of liability as between the trust estate and the trustee personally may be determined in a proceeding under [section 179].

NEW SECTION. **Section 210. Protection of third person dealing with trustee.** With respect to a third person dealing with a trustee or assisting a trustee in the conduct of a transaction, if the third person acts for a valuable consideration and without actual knowledge that the trustee is exceeding the trustee's powers or improperly exercising them:

(1) the third person is not bound to inquire whether the trustee has power to act or is properly exercising a power and may assume without inquiry the existence of a trust power and its proper exercise; and

(2) the third person is fully protected in dealing with or assisting the trustee just as if the trustee has and is properly exercising the power the trustee purports to exercise.

NEW SECTION. **Section 211. Application of property delivered to trustee by third person.** A third person is not bound to ensure the proper application of trust property paid or delivered to the trustee.

NEW SECTION. **Section 212. Protection of third person**

dealing with former trustee. If a third person acting for a valuable consideration enters into a transaction with a former trustee without knowledge that the person is no longer a trustee, the third person is fully protected just as if the former trustee were still a trustee.

NEW SECTION. **Section 213. Effects on real property transactions.** (1) This section relates only to conveyances of real property to or from a trust, and supplements, but does not modify other substantive provisions of [sections 1 through 215] relating to the creation or validity of trusts. This section does not affect conveyances recorded prior to October 1, 1989.

(2) Except as otherwise provided in [sections 1 through 215], a conveyance of real property to a trustee designated as such in the conveyance vests the whole estate conveyed in the trustee, subject only to the trustee's duties. The beneficiaries of the trust take no estate or interest in the real property, but may determine or enforce the terms of the trust as provided in [sections 1 through 215].

(3) An instrument creating or amending a trust need not be recorded, but may be if properly acknowledged.

(4) If there is no clear reference to or designation of a grantee as trustee in a conveyance (nor in a separately recorded instrument recorded in the same county as the

conveyance and describing the same property as described in the conveyance), the conveyance shall be considered to be absolute to the grantee, in favor of purchasers or encumbrancers from the grantee, who were without actual knowledge and who acted for a valuable consideration, despite any valid trust which may exist.

(5) Unless limitations upon a trustee's power or authority are set forth in the recorded conveyance of real property to the trustee or in a separate trust instrument (or portion thereof, or abstract thereof) recorded in the same county, there are no limitations upon the trustee's power or authority to convey or encumber the real property in favor of third persons who were without actual knowledge and who acted for a valuable consideration. A separate trust instrument incorporated by reference in a conveyance to a trustee cannot limit the trustee's power or authority to convey or encumber unless the limitations are set forth in the trust instrument (or portion thereof or abstract thereof) which is also recorded in the county where the real property is located. An amendment to a recorded trust instrument may not affect the power or authority of a trustee to convey or encumber unless it is also recorded in the same place.

(6) A subsequent conveyance from a person designated in the original conveyance as trustee (or from his successor

trustee) conveys the whole estate vested in the trustee, except as limited by the terms of the conveyance. The identity of any successor trustee may be established by a recorded affidavit of the successor trustee specifying his name and address and the date and circumstances of his succession, and confirming that he is currently lawfully serving in such capacity.

(7) In an action or proceeding by a third person involving the real property granted to a trustee, the person designated as trustee in the original conveyance, or the successor trustee as established in subsection (6), or, if none, the person then actually serving as trustee, or, if none, any beneficiary designated by the court to represent the interests of the beneficiaries, shall be considered the only necessary representative of the trust and of all persons with an interest therein. A judgment is binding upon and conclusive against the trust and all persons interested therein as to all matters finally adjudicated in the judgment.

NEW SECTION. **Section 214. Creditor's rights against revocable trust during trustor's lifetime.** If the trustor retains the power to revoke the trust in whole or in part, the trust property is subject to the claims of creditors of the trustor to the extent of the power of revocation during the lifetime of the trustor.

NEW SECTION. **Section 215. Creditor's rights against revocable trust after trustor's death.** Upon the death of a trustor who had retained the power to revoke the trust in whole or in part, the property that was subject to the power of revocation at the time of the trustor's death is subject to the claims of creditors of the decedent trustor's estate and to the expenses of administration of the estate to the extent that the decedent trustor's estate is inadequate to satisfy those claims and expenses.

Section 216. Section 2-2-103, MCA, is amended to read:

"**2-2-103. Public trust.** (1) The holding of public office or employment is a public trust, created by the confidence which the electorate reposes in the integrity of public officers, legislators, and employees. A public officer, legislator, or employee shall carry out his duties for the benefit of the people of the state.

(2) A public officer, legislator, or employee whose conduct departs from his fiduciary duty is liable to the people of the state as a trustee of property, is liable to a beneficiary under ~~72-20-203(2)~~ [section 77], and shall suffer such other liabilities as a private fiduciary would suffer for abuse of his trust. The county attorney of the county where the trust is violated may bring appropriate judicial proceedings on behalf of the people. Any moneys collected in such actions shall be paid to the general fund

of the aggrieved agency.

(3) The following sections set forth various rules of conduct, the transgression of any of which is, as such, a violation of fiduciary duty, and various ethical principles, the transgression of any of which is not, as such, a violation of fiduciary duty."

Section 217. Section 31-2-209, MCA, is amended to read:

"**31-2-209. Assignment -- when void.** An assignment for the benefit of creditors is void against any creditor of the assignor not assenting thereto in the following cases:

(1) if it gives a preference dependent upon any condition or contingency or with any power of revocation reserved;

(2) if it tends to coerce any creditor to release or compromise his demand;

(3) if it provides for the payment of any claim known by the assignor to be false or fraudulent or for the payment of more upon any claim than is known to be justly due from the assignor;

(4) if it reserves any interest in the assigned property or in any part thereof to the assignor or for his benefit, before all existing debts are paid;

(5) if it confers upon the assignee any power which, if exercised, might prevent or delay the immediate

conversion of the assigned property to the purposes of the trust;

(6) if it exempts him from liability for neglect of duty or misconduct;

(7) if it violates ~~72-20-203(1)~~ [section 77]."

Section 218. Section 70-20-101, MCA, is amended to read:

"**70-20-101. Transfer to be in writing -- statute of frauds.** No estate or interest in real property, other than an estate at will or for a term not exceeding 1 year, ~~or any trust over or power concerning it or in any manner relating thereto~~ can be created, granted, assigned, surrendered, or declared otherwise than by operation of law or a conveyance or other instrument in writing, subscribed by the party creating, granting, assigning, surrendering, or declaring it or by his lawful agent thereunto authorized by writing."

Section 219. Section 82-1-304, MCA, is amended to read:

"**82-1-304. Administration of the trust.** (1) The administration of the trust shall comply with the appropriate provisions regulating trusts contained in Title 72.

(2) No trustee or attorney fees may be paid from the trust proceeds.

(3) All bonuses, rental payments, royalties, and other

income shall be paid to the trustee until the trust is terminated and notice of its termination given to all interested parties. The trustee shall distribute all money held in the trust to the person or persons entitled to it upon the order of the district court.

(4) A trust in favor of unlocatable owners shall be in force until the unlocatable owners of the mineral interest in question have successfully claimed the share of funds held in trust and filed the notice provided in 82-1-306.

(5) The trustee shall invest funds under his management in the manner of a prudent man, as ~~defined in 72-21-104~~ provided in [section 89]. Fifty percent of the interest earned on each trust shall be credited to the general fund of the county in which the mineral interest is located to defray the costs of administration.

(6) Funds held in the trusts are subject to the provisions governing abandoned property contained in Title 70, chapter 9."

NEW SECTION. **Section 220. Repealer.** Sections 72-12-101 through 72-12-103, Title 72, chapters 20 through 25, sections 72-27-101 and 72-27-102, MCA, are repealed.

NEW SECTION. **Section 221. Codification instruction.** [Sections 1 through 215] are intended to be codified as an integral part of Title 72 and the provisions of Title 72 apply to [sections 1 through 215].

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